

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1957

No. 127

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LOCAL 1976, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA,  
A.F.L. ET AL, PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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PETITION FOR CERTIORARI FILED MAY 13, 1957  
CERTIORARI GRANTED OCTOBER 14, 1957

No. 15026

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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

LOCAL 1976, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMER-  
ICA, AFL., AND LOS ANGELES COUNTY  
DISTRICT COUNCIL OF CARPENTERS  
and NATHAN FLEISHER,

Respondents.

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Transcript of Record

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Petition for Enforcement of Order of the National Labor  
Relations Board



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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GENERAL COUNSEL'S EXHIBIT No. 1-A

United States of America

National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION  
OR ITS AGENT

Case No. 21-CC-189. Date filed 8/25/54.

\* \* \* \* \*

1. Labor Organization or its Agents Against  
Which Charge Is Brought:

Name: 1. Carpenters District Council of Los Angeles County; 2. United Brotherhood of Carpenters, Joiners and Helpers, Local 1976; 3. United Brotherhood of Carpenters, Joiners and Helpers of America; 4. Business Agent, Fleisher of Local 1976.

Address: 1. 2200 West 7th, Los Angeles, California; 2. 2526 1/2 Brooklyn, Los Angeles, California; 3. 222 East Michigan, Indianapolis, Indiana; 4. 2526 1/2 Brooklyn, Los Angeles, California.

The above-named organizations or its agents have engaged in and are engaging in unfair labor practices within the meaning of Section (8b) Subsections 8 (b) (4) (A) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

The above-named labor organizations and their agents on August 17, 1954 ordered certain employees of Havstad and Jensen Co., hereinafter called Hav-

2. *National Labor Relations Board vs.*

stad, to strike and refuse to handle materials supplied Havstad by Sand Door and Plywood Co., hereinafter called Sand, an object thereof being to force Havstad to cease doing business with Sand.

3. Name of Employer: Sand Door and Plywood Co.

4. Location of Plant Involved: 1049 East Slauson, Los Angeles, California.

5. Type of Establishment: Wholesaler.

6. Identify Principal Product or Service: Jobber of plywood doors and allied Building materials.

7. No. of Workers Employed: 12.

8. Full name of Party Filing Charge: Sand Door and Plywood Company.

9. Address of Party Filing Charge: 1049 East Slauson, Los Angeles, California. (Please send copies of all correspondence and pleadings to Howard E. LeBaron, 111 W. 7th Street, Rm. 1024, Los Angeles, Calif.)

10. Tel. No.: ADams 3-4371.

11. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

8/25/54

/s/ JAMES C. BARRON

Vice President and General Manager

Affidavit of Service and Postal Return Receipts attached.



GENERAL COUNSEL'S EXHIBIT No. 1-C

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No: 21-CC-189

LOCAL 1976, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMER-  
ICA, AFL, its agent, NATHAN FLEISHER,  
AND DISTRICT COUNCIL OF THE  
UNITED BROTHERHOOD OF CARPEN-  
TERS AND JOINERS OF AMERICA OF  
LOS ANGELES COUNTY,

and

SAND DOOR AND PLYWOOD CO.

COMPLAINT

It having been charged by Sand Door and Ply-  
wood Company that Local 1976, United Brotherhood  
of Carpenters and Joiners of America, AFL, its  
agent, Nathan Fleisher and District Council of the  
United Brotherhood of Carpenters and Joiners of  
America, of Los Angeles County, herein called Re-  
spondents, have engaged in and are engaging in un-  
fair labor practices affecting commerce as defined in  
the National Labor Relations Act, as amended, Pub-  
lic Law 101, 80th Congress, First Session, herein-  
after called the Act, the General Counsel of the Na-  
tional Labor Relations, on behalf of the Board, by  
the Acting Regional Director for the Twenty-First

Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

1. Sand Door and Plywood Company (herein called Sand), a California corporation, is engaged in Los Angeles, California, in the business of wholesale jobber of doors, plywood and allied building materials. In addition Sand is the exclusive Southern California sales agency for Paine Lumber Company of Oshkosh, Wisconsin (herein called Paine). Sand annually purchases and causes to be shipped to it from outside the State of California, goods and materials valued at in excess of \$750,000.

2. Paine manufactures a special type of door known in the trade as "Paine Rezo Doors," used principally in hospitals and institutions. Paine annually ships Paine Rezo doors valued in excess of \$500,000 from its factory in Oshkosh, Wisconsin to Sand in Los Angeles, California.

3. Watson and Dreps are retailers and contractors of building materials, specializing in institutional buildings. Among other materials Watson and Dreps purchases Paine Rezo doors from Sand.

4. Havstad and Jensen Co. (herein called Havstad & Jensen) is a partnership composed of L. C. Havstad and Emmet R. Jensen, which is engaged in the business of general contracting in the building and construction industry.

5. At all times material, Havstad & Jensen has been engaged as general contractor in the construction of the College of Medical Evangelists connected with the White Memorial Hospital in Los Angeles,

California (herein called the college project). In connection with this project, Havstad & Jensen contracted to purchase Paine Rezo doors from Watson and Dreps.

6. All of the business entities named in paragraphs 1 through 4 hereof are employers within the meaning of the Act, and Sand and Paine are, and at all times material herein have been, engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

7. Respondents Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, (herein called Local 1976) and District Council of the United Brotherhood of Carpenters and Joiners of America of Los Angeles County (herein called Council), are labor organizations within the meaning of Section 2 (5) of the Act.

8. At all times material herein, Respondent Nathan Fleisher has been business agent of Respondent Local 1976 and its agent within the meaning of Sections 2 (13) and 8 (b) of the Act.

9. At all times material herein, Respondent Local 1976 has been a constituent member of and affiliated with Respondent Council.

10. At all times material herein, the carpenters employed by Havstad & Jensen on the college project have been members of or represented for collective bargaining purposes by Respondent Local 1976.

11. Paine Rezo doors do not bear the union label of Respondents, their parent organization or any local union affiliated with it or them.

12. Since on or about August 17, 1954, Respond-

Los Angeles County, hereafter referred to as respondents, and separately and severally answering the complaint on file in the above entitled matter for themselves and for no others, admit, deny and allege as follows:

1. Answering paragraph 1 of the complaint, respondents and each of them are without knowledge or information upon which to have a belief as to the allegations therein contained, and basing their several and separate answer on these grounds, deny each and every allegation therein contained.

2. Answering paragraph 2 of the complaint, respondents and each of them are without knowledge or information upon which to have a belief as to the allegations therein contained, and basing their several and separate answer on these grounds, deny each and every allegation therein contained.

3. Answering paragraph 3 of the complaint, respondents and each of them are without knowledge or information upon which to have a belief as to the allegations therein contained, and basing their several and separate answer on these grounds, deny each and every allegation therein contained.

4. Answering paragraph 4 of the complaint, respondents and each of them are without knowledge or information upon which to have belief as to the allegations therein contained, and basing their several and separate answer on these grounds, deny each and every allegation therein contained.

5. Answering paragraph 5 of the complaint, respondents and each of them admit that Havstad &

Jensen have been engaged as general contractors in the construction of the College of Medical Evangelists connected with the White Memorial Hospital in Los Angeles, California. Respondents and each of them are without knowledge or information upon which to base a belief as to the allegation that Havstad & Jensen in connection with the aforementioned building project contracted to purchase Paine Rezo Doors from Watson & Dreps or any other source, and, basing their separate and several answer on these grounds, deny said allegation, and each and every other allegation therein not herein specifically admitted.

6. Answering paragraph 6 of the complaint, respondents and each of them deny generally and specifically each and every allegation therein contained.

7. Answering paragraph 7 of the complaint, respondents and each of them admit all allegations therein.

8. (a) Answering paragraph 8 of said complaint, respondent, Local 1976, admits that Nathan Fleisher at all times mentioned in the complaint has been and is the Business Agent of Local 1976, but alleges that such powers and duties of the said Fleisher are limited and are only such as are delegated by Local 1976 as an autonomous unincorporated association, and denies each and every other allegation contained in said paragraph.

(b) Answering paragraph 8 of the complaint, respondent, District Council of the United Brotherhood of Carpenters and Joiners of America of Los



Angeles County, on information and belief admits that Nathan Fleisher has been the Business Agent of Local 1976, but avers that it has no information or belief as to whether the said Fleisher is an agent of Local 1976 within the meaning of Section 2(13) 8(b) 10(1) of the National Labor Relations Act as amended, and basing its answer upon such lack of information and belief denies generally and specifically said allegation and all other allegations therein contained and not specifically admitted herein.

9. Answering paragraph 9 of the complaint, respondents and each of them admit the allegations therein contained.

10. Answering paragraph 10 of the complaint, respondents and each of them on information and belief admit the allegations therein contained.

11. Answering paragraph 11 of the complaint, respondents and each of them are without knowledge or information on which to have a belief as to the allegation therein contained, and basing their separate and several answer on these grounds deny each and every allegation therein contained.

12. Answering paragraph 12 of the said complaint, respondents and each of them deny each and every allegation therein contained.

13. Answering paragraph 13 of the complaint, respondents and each of them deny generally and specifically each and every allegation therein contained.

14. Answering paragraph 14 of the complaint, respondents and each of them separately and severally deny each and every allegation therein contained.



15. Answering paragraph 15 of the complaint, respondents and each of them separately and severally deny each and every allegation therein contained.

16. Answering paragraph 16 of the complaint, respondents and each of them separately and severally deny each and every allegation therein contained.

17. Answering paragraph 17 of the complaint, respondents and each of them separately and severally deny each and every allegation therein contained.

As and for a second, separate and further defense, respondents allege:

1. Reallege and incorporate herein by this reference as though fully set forth paragraphs 1 through 17 of their first defense.

2. Allege that the National Labor Relations Board does not have jurisdiction over the subject matter of the complaint or the persons of the respondents.

As and for a third, separate and further defense, respondents allege:

1. Reallege and incorporate herein by this reference as though fully set forth paragraphs 1 through 17 of their first defense.

2. Allege that the National Labor Relations Act as amended and the relief sought by the complaint herein were unconstitutional and void in that each of them contravene the provisions of the First, Fifth and Thirteenth Amendments of the Constitution of the United States of America:

Wherefore, having fully answered the complaint

Herein, the respondents pray that the complaint be in all things dismissed, and for such other and further relief as the Board deems proper.

ARTHUR GARRETT and  
JAMES M. NICOSON

/s/ By ARTHUR GARRETT,  
Attorneys for Respondents

Duly Verified.

Affidavit of Service by Mail attached.

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GENERAL COUNSEL'S EXHIBIT No. 1-G

United States of America

National Labor Relations Board

**FIRST AMENDED CHARGE AGAINST LA-  
BOR ORGANIZATION OR ITS AGENTS**

Case No. 21-CC-189. Date Filed: 10/15/54.

\* \* \* \* \*

1. Labor Organization or its Agents Against  
Which Charge Is Brought:

Name: 1. Local 1976, United Brotherhood of Carpenters and Joiners of America, AFE; 2. Business Agent Nathan Fleisher of Local 1976; 3. District Council of the United Brotherhood of Carpenters and Joiners of America of Los Angeles County.

Address: 1. 2526 1/2 Brooklyn, Los Angeles, California; 2. 2526 1/2 Brooklyn, Los Angeles, California; 3. 2200 West 7th Street, Los Angeles, California.

The above-named organizations or its agents have engaged in and are engaging in unfair labor practices within the meaning of Section (8b) Subsections 8. (b) (4) (A) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

Since on or about August 17, 1954, the above-named labor organizations and their agents have instructed, induced and encouraged employees of Havstad and Jensen to engage in a strike or concerted refusal in the course of their employment to use, transport, or otherwise handle or work on any goods, articles, materials or commodities of Paine Lumber Company or Sand Door and Plywood Company, an object thereof being to force or require Havstad and Jensen to cease using, handling, transporting or otherwise dealing in the products of Paine or Sand or to cease doing business with Paine or Sand.

3. Name of Employer: Sand Door and Plywood Co.

4. Location of Plant Involved: 1049 East Slau-son, Los Angeles, California.

5. Type of Establishment: Wholesaler.

6. Identify Principal Product or Service: Jobber of plywood doors and allied building materials.

7. No. of Workers Employed: 12.

8. Full Name of Party Filing Charge: Sand Door and Plywood Company.

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9. Address of Party Filing Charge: 1049 East Slauson, Los Angeles, California. (Please send copies of all correspondence and pleadings to Howard F. LeBaron, 111 W. 7th Street, Rm. 1024, Los Angeles, Calif.)

10. Tel. No.: ADams 3-4371.

11. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

October 15, 1954.

/s/ JAMES C. BARRON,

Vice President and General Manager

Affidavit of Service and Postal Return Receipts attached.

GENERAL COUNSEL'S EXHIBIT No. 1-H

[Title of Board and Cause.]

AMENDMENT TO COMPLAINT

An amended charge having been filed subsequent to the issuance of the Complaint herein, the Acting Regional Director hereby amends the Complaint by adding the words "induced and encouraged" to follow the word "instructed" in the second line of paragraph 12 on page 3 thereof.

A copy of the amended charge is attached hereto.

Dated at Los Angeles, California, this 15th day of October, 1954.

[Seal] /s/ DANIEL J. HARRINGTON,  
Acting Regional Director, National Labor Relations  
Board, Twenty-First Region

Affidavit of Service and Postal Return Receipts  
attached.

[Title of Board and Cause.]

## INTERMEDIATE REPORT AND RECOM- MENDED ORDER

### Statement of the Case

Upon a charge filed by Sand Door and Plywood Co., herein called Sand Door, the General Counsel of the National Labor Relations Board issued a complaint dated September 24, 1954, against Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, herein called Local 1976; its agent, Nathan Fleisher, and Los Angeles County District Council of Carpenters, AFL,<sup>1</sup> herein called the District Council; alleging that Local 1976, Nathan Fleisher, and the District Council, herein collectively called Respondents, had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

<sup>1</sup> As corrected by stipulation at the hearing.



In respect to unfair labor practices, the complaint alleges that the Respondents instructed, induced, and encouraged employees of Havstad & Jensen, a partnership engaged in the business of general contracting in the building and construction industry, to refuse to install doors manufactured by Paine Lumber Company, Oshkosh, Wisconsin, a product distributed in Southern California by Sand Door.

Respondents' answer denies the commission of unfair labor practices, and asserts that the National Labor Relations Board lacks jurisdiction over the subject matter of the complaint and the persons of the Respondents.—

Pursuant to notice a hearing was held before the undersigned in Los Angeles, California, from October 18 through 22, 1954. All parties were represented by counsel and were permitted to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. A brief has been received from counsel for the Respondents and from counsel for Sand Door.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

### Findings of Fact

#### I. The business of the employers:

Sand Door is a California corporation engaged in and about Los Angeles, California, in wholesale jobbing of doors, plywood, and allied building materials. Sand Door is the exclusive Southern California sales agency for Paine Lumber Company, Osh-



kosh, Wisconsin, herein called Paine. In 1953 Sand Door received from Paine materials, including doors, having a value of \$185,696.84. From January 1, 1954, through September 8, 1954, Sand Door received materials, including doors, from Paine to the value of \$103,503.05. All such shipments were made direct to Sand Door from Wisconsin. In early August 1954 Sand Door received a shipment of doors from Paine having a value of approximately \$9,000. These doors were purchased for Watson & Dreps, mill work contractors in Los Angeles, who took delivery at the Sand Door warehouse.

Havstad & Jensen are joint adventurers who since July 1, 1952, have been engaged in the construction of a hospital called White Memorial Hospital for a religious organization, the College of Medical Evangelists. In mid-August Havstad & Jensen received at the building project 398 doors which Paine had shipped to Sand Door earlier that month and which Havstad & Jensen had purchased from Watson & Dreps. Emmett R. Jensen, who with Havstad constitutes the business entity doing the construction work at the hospital, is a member of Building Contractors Association of Southern California, herein called BCA. Since 1933 or 1934, in behalf of Jensen and other members, BCA has negotiated labor contracts with Respondents' parent, United Brotherhood of Carpenters and Joiners of America, herein called Carpenters. The latest such contract was effective May 1, 1954. Havstad & Jensen have been governed in respect to carpenter labor by the terms of this agreement.

Altmans Construction Company, also a member of BCA, in 1953 performed construction work at a tire plant of B. F. Goodrich and Company in Los Angeles having a value in excess of \$745,000.

In 1953 B. F. Goodrich Rubber Company shipped from its Los Angeles plant to States other than California rubber products having a value in excess of \$4,500,000.

II. The labor organization involved:

The Respondents Local 1976 and District Council are labor organizations within the meaning of Section 2 (5) of the Act. Nathan Fleisher is the business agent of Local 1976.

III. The unfair labor practices:

The essential facts are not in dispute. In August 1954 Sand Door received doors valued at about \$9,000 from Paine and notified Watson & Dreps of their arrival. The doors were delivered to the hospital construction site by August 17 and laborers began distributing the doors from floor to floor. On that morning, Nathan Fleisher, business agent of Local 1976, came to the hospital and spoke to Arnold Steinert, carpenter foreman for Havstad & Jensen. Fleisher told Steinert that the doors could not be hung as they did not carry a union label. Steinert then directed the laborers to cease the distribution of the doors and in the presence of Fleisher told a carpenter, Sam Agronovich, to quit hanging the doors because they were not union-made. Agronovich was then assigned to other work. In a short time, James Nicholson, superintendent

for Havstad & Jensen, arrived at the job and learned that the doors were not being hung. Seeing Fleisher and a carpenter employee, Abe Finkelstein, standing together, Nicholson asked Fleisher why he had stopped the men from hanging the doors. Fleisher answered that he had orders from the District Council to do so until it could be established that the doors were union or non-union. Nicholson angrily told Sam Agronovich and Saul Agronovich, both carpenters and the latter steward for Local 1976 on the job, that they were laid off, but soon retracted his order and permitted the men to do other work. No individual employee was directly ordered by Nicholson or Steinert to hang doors after the visit of Fleisher.

In the meantime, James C. Barron, vice president and general manager of Sand Door, telephoned Earl Thomas, a representative of the District Council, and asked to be informed concerning the difficulty about the doors. Thomas said that he was not familiar with the matter, but would find out if the doors were union-made. The next day Barron again called Thomas, who said, "We can't hang non-union doors," and asked why Barron did not buy a union-made product. Barron also talked to Fleisher, who told him that because the doors did not have a union label they would have to be "cleared" before they could be hung. Emmett Jensen, who with Havstad constitutes the business entity known as Havstad & Jensen, also talked with Thomas, who told him that the doors were made by a company having no union connection.

Thereafter the Regional Director for the Twenty-first Region filed a petition in the U. S. District Court for the Southern District of California, seeking a temporary restraining order under Section 10 (1) of the Act. During the hearing on this matter, on October 4, the Court apparently inquired if a direct request or order had been made of or to the carpenter employees to hang the doors. In consequence of the Court's inquiry a representative of Sand Door telephoned Nicholson to suggest that such a course be followed. On October 5 Nicholson and Steinert asked each carpenter employee on the hospital job, separately, "Would you be willing to hang the doors?" Each replied in the negative. Steward Saul Agronovich answered in the presence of another carpenter employee, Lou Feldman, that he was not, without clearance from Local 1976; Feldman said he would be glad to do so if the doors were cleared; and another carpenter, Charles Franklin, gave substantially the same reply. Of the two remaining carpenter-employees, Shand said that he did not intend to "get his neck in a sling," and Lokna said that he could not afford to do so.<sup>2</sup>

The constitution and by-laws of the Carpenters provide that where two or more local unions exist in a city they must be represented in a District Council composed exclusively of delegates from such local unions and governed by such laws and trade

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<sup>2</sup> Questioning of the individual employees in this context is characterized in Respondent's brief as a "questionable procedure." I find no impropriety in it.

rules adopted by the District Council with the approval of the constituent locals. The District Council, Respondent here, has as constituents local 1976 and a number of other locals in the Los Angeles area. Among the by-laws and trade rules of the District Council is one reading:

No member shall use, handle, install or erect any material produced or manufactured from wood that is not produced and manufactured by members of the United Brotherhood of Carpenters and Joiners of America.

A further provision states:

It shall be the duty of every member who knows of any member violating any of the by-laws or trade rules to prefer charges in the District Council against this member.

Finally, it is provided that all business representatives of the locals work under the supervision and direction of the District Council. For this reason and because on August 17 Fleisher was acting to implement the trade rules and by-laws of the District Council, I find him to be an agent both of the District Council and of his direct employer, Local 1976.

The first point for decision concerns the jurisdictional aspect of the case. In determining whether the Board will assert jurisdiction in cases involving allegations of secondary boycott, the operations of the primary employer, which here would be Havstad & Jensen, are first considered. If the impact on commerce under Board standards is sufficient for assertion of jurisdiction, no further inquiry is necessary. Clearly the operations of Havstad & Jensen do not



affect commerce so as to satisfy the Board's requirements. In such a situation the Board has held that the operations of the secondary employers, to the extent that they are affected by the alleged unlawful boycott, must be viewed. Here we find that the business of Paine and Sand Door are directly affected. Although it is clear that if the Respondents' boycott action is confined to the hospital being constructed by Havstad & Jensen, the diminution in shipments by Paine and receipts by Sand Door would be slight, the by-laws of the District Council urge and perhaps even direct members of the constituent locals to refuse to work on wood articles not made by their union. A representative of the District Council, Earl Thomas, suggested to Sand Door that the difficulty might be solved if the latter would buy union-made doors. Obviously, it is Respondents' announced purpose and policy to discourage its members from handling or using disapproved wood products. If Respondents are successful in this respect Paine will find no distributor for its doors in and around Los Angeles and Sand Door will find no purchasers in that area—with the result that interstate shipments in excess of \$185,000 annually will cease. I consider this a sufficient predicate for the assertion of jurisdiction, and Respondents' defense based upon such grounds is found to be without merit.

Respondents point to the lack of evidence to show that Fleisher or any such representative instructed any carpenter employee to cease hanging doors. It is clear, of course, that Foreman Steinert told Agronovich to stop hanging the doors because they were not union-made and that Fleisher was present when this



direction was given. Again, in the presence of Finkelstein, Fleisher said that he had orders from the District Council to stop the door hanging. Finkelstein could have entertained no doubt about Respondents' desire and Agronovich must have received the same impression. But these are not the only instances where the Respondents in my opinion have induced and encouraged employees to refuse to hang the doors. The by-laws and trade rules of the District Council set forth above constitute a clear direction to them in such matters. Further inducement and encouragement is found in the language of the contract under which both Havstad & Jensen and the Respondents have status as parties. The pertinent section there recites: "Workmen shall not be required to handle non-union material."

Another point to which Respondents address themselves is that no language of Fleisher, which might be interpreted as inducement or encouragement, was made in the presence of more than one employee. This appears to be the fact. The Board has held, with Court approval, that in order to amount to a violation of Section 8 (b) (4) (A) of the Act, the prohibited inducement and encouragement must involve more than one employee, on the theory that a single employee may not act or be induced to act in concert.<sup>4</sup> In the Glaziers' case it appears that only one employee was working on the job at the time that the conduct complained of occurred and the impossibility of concerted activity.

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<sup>4</sup> Glaziers' Union Local No. 27, 99 NLRB 1391.

existed because of that circumstance. Here the possibility of concerted action exists because of the greater number of employees. The Act would appear not to require inducement and encouragement of more than one employee if he has fellow workers with whom he might act in concert. It seems entirely reasonable to me to hold that inducement and encouragement of a single employee in the reasonable expectation that the message be carried to others would sufficiently satisfy the literal meaning of Section 8 (b) (4) (A). Even aside from the conduct of Fleisher, the trade rules and by-laws of the District Council were of course directed to all members and thus to all of the carpenter employees of Havstad & Jensen.

Because of the conduct of Fleisher described above, because of the trade rules and by-laws of the District Council, and because of the reservation in the collective bargaining contract of a right to refuse to work on non-union material; I find that the Respondents have induced and encouraged employees of Havstad & Jensen to refuse to hang the Raine doors.

The only remaining questions are whether the refusal occurred in the course of employment and whether Respondents' action is placed beyond the reach of remedial action because of the collective bargaining contract. In a somewhat similar case under similar contract provisions, the Board reasoned that employment, as defined by the contract, excluded from the required job duties any work on

"unfair goods." In dismissing the complaint the Board said:

It cannot be said therefore that by causing the employees to exercise their contractual privilege the respondent induced a concerted refusal to work in the course of employment with an object of forcing any employer to cease doing business with any other person in violation of Section 8 (b) (4) (A) \* \* \* We therefore find that the respondent did not violate Section 8 (b) (4) (a) of the Act by causing the employees of the various trucking carriers to exercise their contractual privilege of declining to handle Pittsburgh freight.

This appears to be the latest expression of the Board on the point, and as it purports to be an interpretation of the law sought to be applied here, it is binding upon me. Should I be mistaken in my appraisal of the decision and should the Board have intended there merely to fashion an appropriate remedy to fit peculiar and unique facts, it should be remembered then that in the case here for decision Sand Door and Paine were not parties to any contract with the Respondents and that the obvious purpose of the Respondents working through the employees of Havstad & Jensen was to bring to a stop the importation into Southern California of doors not made under conditions satisfactory to the Respondents. Havstad & Jensen constituted only a mi-

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<sup>5</sup> Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135, 105 NLRB 740.

nor outlet for that product. Whether by contract with a number of small employers a labor organization may effectively accomplish such a boycott obviously affecting other and larger employers throughout a wide geographical area, is a question which the Board may desire to reconsider. Were I free to apply the law to this case without binding precedent, I would find that a labor organization may not immunize itself from the interdictions of Section 8 (b) (4) (A) in such fashion. I know of no other situation cognizable by the Board under the Act where private arrangements are given such wide and effective sweep in apparent derogation of public policy.<sup>6</sup> Freedom to contract is precious but not without circumscription familiar to the law.<sup>7</sup>

The Board has held<sup>8</sup> that a refusal by employees to handle certain goods in a situation where by con-

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<sup>6</sup> Mackay Radio and Telegraph Company, Inc., 96 NLRB 740, 742.

<sup>7</sup> Cf. *National Licorice Company v. N. L. R. B.*, 309 U. S. 350, particularly the following at pages 364 and 365: Obviously employers cannot set at naught the National Labor Relations Act by inducing their workmen to agree not to demand performance of the duties which it imposes \* \* \* The effect of the Board's order, as we construe it, is to preclude the petitioner from taking any benefit of the contracts which were procured through violations of the Act, and which are themselves continuing means of violating it, and from carrying out any of the contract provisions, the effect of which would be to infringe the rights guaranteed by the National Labor Relations Act. (Emphasis supplied)

<sup>8</sup> Footnote <sup>5</sup> *supra*.

tract their bargaining representative has excluded from required job duties work on "unfair goods" is not a refusal "in the course of \* \* \* employment" as that language is used in the Act. In the cited case and here the "unfair goods" were in no sense intrinsically objectionable. Hanging wooden doors is within *the within* the traditional skill of carpenters to which they claim exclusive right. By any ordinary meaning, it would seem that the task did indeed fall within the course of employment of the carpenters of Havstad & Jensen. At least one was hired for no other purpose. If hanging the Paine doors was not in the course of employment that was so only because of a contract provision designed to implement a purpose to boycott. But the decisional law seems clear in the matter and a dismissal of the complaint must follow.

I find upon the basis of the undisputed facts as outlined above and in accordance with precedential Board decisions that the Respondents induced and encouraged employees of Havstad & Jensen to refuse to handle or install doors manufactured by Paine; that an object of this refusal was to force or require Sand Door to cease doing business with Paine; that the refusal to handle or install by employees of Havstad & Jensen did not occur "in the course of employment"; that the collective bargaining contract to which Respondents and Havstad & Jensen are parties constitutes a consent on the part of Havstad & Jensen to such a refusal; and that therefore the Respondents have not violated Section 8 (b) (4) (A) of the Act.



It is therefore recommended that the complaint be dismissed in its entirety.

/s/ WALLACE E. ROYSTER,  
Trial Examiner

Affidavit of Service and Return Postal Receipts  
attached.

[Title of Board and Cause.]

### EXCEPTIONS OF CHARGING PARTY TO INTERMEDIATE REPORT

The charging party, Sand Door and Plywood Co., hereby excepts to the Intermediate Report and Recommendations in the above entitled matter as follows:

For that the Trial Examiner did find:

Page 4, Line 9:

1. That no language of Fleisher, which might be interpreted as inducement or encouragement, was made in the presence of more than one employee.

For that the Trial Examiner did not find:

2. Steinert to be an agent of Respondents Local 1976 and District Council.

3. Agronovich to be an agent of Respondents Local 1976 and District Council.

4. That Agronovich induced and encouraged employees not to hang the doors.

References are to pages and lines of the Intermediate Report.

For that the Trial Examiner did not recommend that:

5. Jurisdiction should also be asserted on the ground that Jensen is party to a labor contract between Building Contractors' Association and Respondents herein.

6. Respondents be required to cease and desist their unfair labor practices.

7. Respondents be required to remedy their unfair labor practices.

Respectfully submitted,

/s/ HOWARD F. LeBARON,

For the charging party, Sand  
Deor and Plywood Co.

Dated at Los Angeles this 28th day of January,  
1955.

[Title of Board and Cause.]

## EXCEPTIONS TO INTERMEDIATE REPORT

Comes now Counsel for the General Counsel and respectfully files the following exceptions to the Intermediate Report and Recommended Order of the Honorable Wallace E. Royster, Trial Examiner herein, issued December 13, 1954.

1. To the statement or finding of the Trial Examiner (I.R. p. 4, line 28) that Havstad & Jensen is the primary employer, and to the failure to find that the primary employer for the purposes of this case

is Paine Lumber Company, the manufacturer of the nonunion doors, which Respondents refused to install.

2. To the statement or finding of the Trial Examiner (I.R. p. 4, lines 31-32) that the operations of Havstad & Jensen do not satisfy the Board's requirements for the assertion of jurisdiction (I.R. p. 2, lines 33-50), and to the failure of the Examiner to consider as an additional basis for the assertion of jurisdiction, the commerce of all the members of Building Contractors Association of Southern California, of which Jensen is a member, because all such members are affected as secondary employers through the Association's contract with Respondents.

3. To the failure of the Trial Examiner to find (I.R. p. 3, lines 4-5) that Arnold Steinert, the carpenter foreman, was a member of Carpenters Local No. 563 (R. 91), a constituent member of Respondent District Council (G.C. Ex. 2, p. 37), and as such, subject to its By-Laws and Trade Rules (I.R. p. 3, line 54, p. 34, line 2).

4. To the failure of the Trial Examiner to find that the By-Laws and Trade Rules of Respondent District Council provide, inter alia:

"Instruction to Members" (p. 20)

All carpenter foremen must be members of Carpenters and Joiners of America; no foreman shall hire non-union carpenters. (Sections 16 (g) and 20 (a), pp. 23, 27.)

All foremen are to be held equally responsible (the same as the steward) for the enforcement of all By-

Laws and Trade Rules of this District Council. Violators of this paragraph shall be subject to a fine of \$100 and/or expulsion. (Section 20 (f), p. 28.)

5. To the failure of the Trial Examiner to find that Arnold Steinert, the carpenter foreman of Havstad & Jensen, was acting as the agent of Respondents in accordance with the obligation imposed upon foremen by the aforementioned By-Laws and Trade Rules, when on August 17, 1954, Steinert, pursuant to directions from Nathan Fleisher, Respondents' agent, instructed the laborers employed by Havstad & Jensen to cease distributing the doors to the floors where they were to be hung, and told carpenter Sam Agronovich to quit hanging the doors because they were not union made.

6. To the failure of the Trial Examiner to find that Thomas, the secretary-treasurer of Respondent District Council, told Jensen that he had received a report that "Paine Lumber Company was not a union operation" and that "the carpenters would not be able to handle these doors" (Tr. 130).

7. To the failure of the Trial Examiner to find that since August 17, 1954, Havstad & Jensen has repeatedly but unsuccessfully attempted to hire carpenters to hang the disputed doors, to secure carpenters from Respondents for that purpose and to secure permission from Respondents to have the doors hung (Tr. 43, 51, 52, 77, 87, 117, 131).

8. To the findings of the Trial Examiner (I.R. pp. 5-6) that the clause in the collective bargaining contract between the Building Contractors Associa-

tion of Southern California and Respondents which provides:

Workmen shall not be required to handle non-union material.

excuses Respondents' violation of Section 8 (b) (4) (A) found by the Trial Examiner, and to the failure of the Trial Examiner to find that the aforesaid contract clause did not excuse Respondent's illegal conduct.

9. To the failure of the Trial Examiner to find that in any event, the violation engaged in by Respondents, in inducing the laborers employed by Havstad & Jensen to cease the distribution of the nonunion doors to the point of installation (I.R. p. 3, lines 7-8), is not excused by the aforementioned contract clause, whose coverage is limited to carpenters (Resp. Ex. 1).

10. To the findings of the Examiner that Respondents have not violated Section 8 (b) (4) (A) of the Act (I.R. p. 6, lines 44-45), to the recommendation of the Trial Examiner that the Complaint be dismissed (I.R. p. 7, lines 1-2), and to the failure of the Examiner to find a violation of Section 8 (b) (4) (A) and to recommend an appropriate order.

Dated at Los Angeles, California, this 28th day of January, 1955.

Respectfully submitted,

/s/ GEORGE H. O'BRIEN,

Counsel for the General Counsel



[Title of Board and Cause.]

## RESPONDENTS' EXCEPTIONS TO INTERMEDIATE REPORT OF TRIAL EXAMINER

Come now Local 1976, United Brotherhood of Carpenters and Joiners of America, A. F. of L., Nathan Fleisher, and Los Angeles District Council of Carpenters, respondents, herein, and separately and severally except to the findings of fact and conclusions of law of the Trial Examiner made and entered in his Intermediate Report and Recommended Order in the above entitled matter, as follows:

### I.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Sand" on page 2, line 17 thereof, and ending with the word "Paine" on page 2, line 19 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### II.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "In" on page 2, line 19 thereof,

and ending with the word "\$1185,696.84" on page 2, line 20 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### III.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "From" on page 2, line 20 thereof, and ending with the word "\$103,503.05" on page 2, line 22 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### IV.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "All" on page 2, line 22 thereof, and ending with the word "Wisconsin" on page 2, line 23 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### V.

Respondents, and each of them, separately and severally except to findings of fact and conclusions

of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "In" on page 2, line 23, thereof, and ending with the word "\$9,000.00" on page 2, line 24 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## VI.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "These" on page 2, line 25 thereof, and ending with the word "warehouse" on page 2, line 26 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## VII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "In" on page 2, line 31 thereof, and ending with the word "Dreps" on page 2, line 33 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## VIII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Altmans" on page 2, line 44 thereof, and ending with the word "\$745,000" on page 2, line 46 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## IX.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "In" on page 2, line 48 thereof, and ending with the word "\$1,500,000" on page 2, line 50 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## X.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "The" on page 2, line 60 thereof, and ending with the word "dispute" on page 2, line 60 thereof, for the reason that said findings and

conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XI.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "In" on page 2, line 60 thereof, and ending with the word "arrival" on page 3, line 1 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "The" on page 3, line 1 thereof, and ending with the word "floor" on page 3, line 3 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XIII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "to" on page 3, line 9 thereof,



and ending with the word "union-made" on page 3, line 9 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XIV.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "learned" on page 3, line 12 thereof, and ending with the word "hung" on page 3, line 12 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XV.

Respondents, and each of them, separately and severally, except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Fleisher" where the word appears for the second time on page 3, line 14 thereof, and ending with the word "non-union" on page 3, line 16 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XVI.

Respondents, and each of them, separately and

severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "the" on page 3, line 27 thereof, and ending with the word "product" on page 3, line 29 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XVII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Barron" on page 3, line 29 thereof, and ending with the word "hung" on page 3, line 31 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XVIII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "who" on page 3, line 33 thereof, and ending with the word "connection" on page 3, line 34 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## XIX.

Respondents, and each of them, separately and severally except to the findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "the" on page 3, line 54 thereof, and ending with the word "locals" on page 4, line 2 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## XX.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "for" on page 4, line 19 thereof, and ending with the word "1976" on page 4, line 23 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## XXI.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "If" on page 4, line 26 thereof, and ending with the word "necessary" on page 4, line 30 thereof, for the reason that said findings and conclusions are not supported by substantial evi-

dence on the record considered as a whole and are contrary to the applicable law.

#### XXII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "In" on page 4, line 32 thereof, and ending with the word "viewed" on page 4, line 34 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law:

#### XXIII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Here" on page 4, line 35 thereof, and ending with the word "affected" on page 4, line 36 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XXIV.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, begin-

ning with the word "the" on page 4, line 39 thereof, and ending with the word "union" on page 4, line 41 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XXV.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "a" on page 4, line 41 thereof, and ending with the word "doors" on page 4, line 43 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XXVI.

Respondents, and each of them, separately and severally, except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "obviously" on page 4, line 43 thereof, and ending with the word "products" on page 4, line 45 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

#### XXVII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions



of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "It" on page 4, line 45, thereof, and ending with the word "cease" on page 4, line 49 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XXVIII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "I" on page 4, line 49 thereof, and ending with the word "merit" on page 4, line 51 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XXIX.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Respondents" on page 4, line 53 thereof, and ending with the word "hanging" on page 4, line 59 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## XXX.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Finklestein" on page 4, line 59 thereof, and ending with the word "impression" on page 4, line 61 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## XXXI.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "But" on page 4, line 61 thereof, and ending with the word "doors" on page 4, line 63 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

## XXXII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "the" on page 4, line 64 thereof, and ending with the word "matters" on page 5, line 2 thereof, for the reason that said findings and conclusions are not supported by substantial evidence

on the record considered as a whole and are contrary to the applicable law.

### XXXIII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Further" on page 5, line 2 thereof, and ending with the word "material" on page 5, line 5 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XXXIV.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "here" on page 5, line 17 thereof, and ending with the word "employees" on page 5, line 18 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XXXV.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "The" on page 5, line 18 thereof,

where the word appears for the second time, and ending with the word "consent" on page 5, line 20, thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XXXVI.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "It" on page 5, line 20 thereof, and ending with the word "S. b (4) (A)" on page 5, line 24 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XXXVII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Even" on page 5, line 24 thereof, and ending with the word "Jensen" on page 5, line 27 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XXXVIII.

Respondents, and each of them, separately and severally except to findings of fact and conclusions

of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "Because" on page 5, line 29 thereof, and ending with the word "doors" on page 5, line 34 thereof, for the reason that said findings and conclusion are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XXXIX.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "it" on page 6, line 1 thereof, and ending with the word "reconsider" on page 6, line 11 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.

### XL.

Respondents, and each of them, separately and severally except to findings of fact and conclusions of the trial examiner as set forth in his Intermediate Report and Recommended Order, aforesaid, beginning with the word "I" on page 6, line 35 thereof, and ending with the word "Paine" on page 6, line 40 thereof, for the reason that said findings and conclusions are not supported by substantial evidence on the record considered as a whole and are contrary to the applicable law.



Respectfully submitted,

ARTHUR GARRETT and

JAMES M. NICOSON

/s/ ARTHUR GARRETT

/s/ JAMES M. NICOSON

Attorneys for Respondents

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United States of America

Before the National Labor Relations Board

Case No. 21-CC-189

LOCAL 1976, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMER-  
ICA, AFL, its agent, NATHAN FLEISHER,  
AND LOS ANGELES COUNTY DISTRICT  
COUNCIL OF CARPENTERS

and

SAND DOOR AND PLYWOOD CO.

### DECISION AND ORDER

On December 13, 1954, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in and were not engaging in

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<sup>1</sup> The name of the District Council appears as amended at the hearing.

the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, exceptions and briefs were filed by the General Counsel, the charging party, and the Respondents, and a brief amicus was filed by the Chamber of Commerce of the United States. Pursuant to notice, oral argument was held on July 7, 1955, before the Board at Washington, D. C., in which the General Counsel, the charging party, and the Respondents participated.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, the oral argument, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only insofar as they are consistent with this Decision and Order:

1. The Respondents except to the Trial Examiner's recommendation that jurisdiction should be asserted herein. The complaint alleges that the Respondents induced and encouraged employees of Havstad and Jensen and of other employers to engage in concerted refusals to install nonunion doors manufactured by Paine Lumber Company,<sup>2</sup> and supplied by Sand Door and Plywood Co.,<sup>3</sup> the charging

<sup>2</sup> Hereinafter referred to as Paine.

<sup>3</sup> Hereinafter referred to as Sand.

party, to Havstad and Jensen,<sup>4</sup> with an object of forcing or requiring Havstad and Jensen, Watson and Dreps, and other employers to cease using or otherwise dealing in the products of Paine and Sand and to cease doing business with Paine and Sand, thereby violating Section 8 (b) (4) (A) of the Act.

In the Jamestown Builders Exchange case,<sup>5</sup> the Board set forth the rule which it has since followed<sup>6</sup> for determining whether to assert jurisdiction in cases involving alleged secondary boycotts in violation of Section 8 (b) (4) (A). This rule provides that if the operations of the primary employer alone satisfy the Board's jurisdictional standards, jurisdiction is to be asserted without further inquiry. Otherwise, operations of secondary employers are also to be considered to the extent that they are affected by the alleged unlawful conduct.<sup>7</sup>

<sup>4</sup> The doors in question were shipped by Paine from its Wisconsin plant directly to Sand, the exclusive distributor of Paine doors in Southern California, and were sold by Sand to Watson & Dreps, a building materials retailer, which, in turn, sold the doors to Havstad and Jensen, who were engaged in building a hospital as joint venturers.

<sup>5</sup> Truck Drivers Local Union No. 649, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (Jamestown Builders Exchange, Inc.), 93 NLRB 386.

<sup>6</sup> See International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 554, et al (McAllister Transfer, Inc.), 110 NLRB 1769, hereinafter referred to as McAllister Transfer, Inc.

<sup>7</sup> As to the interpretation of this rule as it applies to operations of secondary employers, see McAllister Transfer, Inc., *supra*.

We agree with the General Counsel that the Trial Examiner erroneously designated Havstad and Jensen as the primary employer in this case in considering whether jurisdiction was to be asserted. As hereinafter found, Havstad and Jensen was a neutral employer whose employees were unlawfully induced or encouraged to refuse to install the doors in question. As such, Havstad and Jensen is a secondary employer within the meaning which we customarily attach to that term. Furthermore, we agree with the General Counsel that Paine is a primary employer within the meaning of the Jamestown jurisdictional rule. Thus, the violation found herein is similar to that involved in the Sound Shingle Co.<sup>8</sup> case. As in that case, the Respondents seek, by proscribed means, to force or require an employer to stop handling the nonunion product of another manufacturer although no active dispute exists between the nonunion manufacturer and the Respondents. The Board there held that such conduct "constitutes a secondary boycott of the type which Section 8 (b) (4) (A) was intended to proscribe." Implicit in that finding was the further finding that the manufacturer of the nonunion product was in the position of a primary employer. And although there was an active primary dispute with the primary employer in the Jamestown case, we perceive no reason to re-

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<sup>8</sup> Washington-Oregon Shingle Weavers' District Council et al (Sound Shingle Co.), 101 NLRB 1159, Member Murdock dissenting. Enforced, 211 F. 2d 946 (C. A. 9, 1954). Hereinafter referred to as Sound Shingle Co.

strict the use of the term primary employer as used in that case to employers with whom the union involved has an active primary dispute. Accordingly, we find that Paine's annual direct outflow of materials from Wisconsin, being in excess of \$100,000, is sufficient to warrant the assertion of jurisdiction in this case.<sup>9</sup>

2. The Respondents contend that, on the record in this case, the Board should find that the Respondents did not induce or encourage employees of Havstad and Jensen to engage in a strike or concerted refusal to install the Paine doors, and that the Trial Examiner's contrary findings should be reversed. On the other hand, the General Counsel and the charging party each contend that the record discloses incidents of inducement or encouragement in addition to those found by the Trial Examiner. In particular, the General Counsel contends that Foreman Steinert's instructions to carpenter Agronovich and several laborers, hereinafter referred to, constitute proscribed inducement and encouragement attributable to the Respondents. We find merit in this contention.

As the Trial Examiner found, on the morning of August 17, 1954, Fleisher, the Respondent Local's business agent, approached Steinert, Havstad and Jensen's foreman, at the building site, and told Steinert to stop hanging the Paine doors until it

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<sup>9</sup> Jonesboro Grain Drying Cooperative, 110 NLRB 481. It is therefore unnecessary to consider other arguments advanced by the General Counsel for asserting jurisdiction in this case.



could be determined whether they were union or nonunion. Steinert told several laborers, who were under his supervision and then engaged in distributing the doors to the locations where they were to be hung, to stop distributing the doors. Then, accompanied by Fleisher, Steinert went to the location where carpenter Agronovich was preparing to hang doors and told him to stop hanging the doors because they were not union-made. Steinert<sup>9</sup> was a member of a constituent local of the Respondent District Council. Under its By-Laws and Trade Rules, Steinert was vested with the authority and responsibility to enforce the District Council's By-Laws and Trade Rules.<sup>10</sup> Among the rules was one barring union members from handling nonunion materials.<sup>11</sup>

It is true that as a foreman as well as union agent, Steinert's status at first glance appears equivocal. However, it is clear that Fleisher, who, as the Trial Examiner found, was an agent of both the Respondent District Council and the Respondent Local, approached Steinert not as a representative of manage-

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<sup>10</sup> Section 20 (f) of the By-Laws and Trade Rules provides: All foremen are to be held equally responsible (the same as the Steward) for the enforcement of all By-Laws and Trade Rules of the District Council. Violators of this paragraph shall be subject to a fine of \$100.00 and/or expulsion.

<sup>11</sup> Section 16 (d) of the By-Laws and Trade Rules provides in part: No member shall use, handle, install or erect any material produced or manufactured from wood that is not produced and manufactured by members of the United Brotherhood of Carpenters and Joiners of America.

ment but as an instrumentality of the Respondents through whom the by-laws could be enforced. Thus, Fleisher did not ask Steinert to stop the door hanging, but, in Steinert's words, Fleisher "told me that we'd have to quit hanging the doors." (emphasis added). Also, when, shortly thereafter, Superintendent Nicholson asked Fleisher why he stopped the men from hanging the doors, as credibly testified to by Nicholson, Fleisher replied that "he had orders from the District Council that morning to stop them from hanging the doors," that he "could have pulled them off yesterday but \* \* \* waited until today." Significantly too, after giving his instructions to Steinert, Fleisher stood by to insure that Steinert passed these instructions on to employees. Furthermore, Fleisher did not approach Steinert to gain enforcement of their contract which the Respondents claim relieved the carpenters of the duty of installing the Paine doors, for at no time in his conversations with Steinert or Nicholson was the contract mentioned by Fleisher. We note in this connection that Steinert, as a foreman, was at the lowest level of management and not an official who would normally be approached as to matters of company policy and contract compliance. As there is, in addition, no indication of the extent of Steinert's authority to act for his employer, we conclude that Fleisher approached Steinert in Steinert's capacity as agent of the Respondent District Council and that Steinert acted in such capacity in ordering the laborers and carpenter Agronovich to stop handling the doors, thereby inducing or encouraging them to engage in a

concerted refusal to handle the Paine doors.<sup>12</sup> We further conclude that Steinert's conduct is attributable to the Respondent Local because Steinert acted pursuant to the orders of Fleisher, who was the business agent of the Respondent Local.

3. We find no merit in the Respondents' contention that, even assuming that there was inducement and encouragement of a concerted refusal to hang the doors, it was not for an object proscribed by the Act. In effect, the Respondents contend that their activity was primary because its only objective was to require Havstad and Jensen to use union-made materials in accordance with their contract, hereinafter referred to, and because the Respondents had no active labor dispute with Paine. As indicated above, we regard our decision in *Sound Shingle Co.*,<sup>13</sup> as dispositive of this issue. Here, as there, a direct object of such inducement was to force or require the secondary employer to cease using or handling the product of the primary employer, another manufacturer. We held that such a product boycott is proscribed by the Act, even in the absence of an active dispute over specific demands with the manufacturer of a nonunion product. As it is clear, under Board precedents, that, in order to find a violation of Section 8 (b) (4) (A), the object proscribed by the Act need not be the sole object of the conduct

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<sup>12</sup> In view of this finding, we need not determine whether there was any other incident constituting such inducement or encouragement.

<sup>13</sup> *Supra*.

under scrutiny,<sup>14</sup> we conclude that the proscribed object necessary to a finding of a violation exists in this case.

Moreover, we are of the opinion that the record establishes the existence of another object of the Respondents' conduct which falls within the interdiction of Section 8 (b) (4) (A). Thus, when Barron of Sand Door called Thomas, the secretary-treasurer of the District Council, for information about the District Council's position with respect to the Paine doors, Thomas stated that clearance might be obtained for the doors purchased by Havstad and Jensen, as well as Sand Door's floor stock and special orders, if Sand's stock orders were cancelled and no further orders were placed with Paine. From this conversation, it is clear that a further objective of the Respondents' conduct was to force or require Sand Door to cease doing business with Paine. Under Section 8 (b) (4) (A), "forcing or requiring \* \* \* any employer or other person \* \* \* to cease doing business with any other person" (emphasis added) is proscribed when means made unlawful by that Section are employed. Thus, it is not necessary that the employer or person whom the labor organization seeks to force to cease doing business with another person be the employer of the employees who have been induced or encouraged to engage in a

<sup>14</sup>Los Angeles Building and Construction Trades Council, AFL, (Standard Oil Co.); 105 NLRB 868 at 870, and cases cited therein: Wood, Wire and Metal Lathers International Union, Local No. 234, AFL (Acousti Engineering Company), 97 NLRB 574.

work stoppage for that purpose. Accordingly, we find that an additional object of the Respondents' conduct, proscribed by the Act, was to force or require Sand to cease doing business with Paine.

4. The final issue which remains to be considered in this case is whether the Respondents' contract with Havstad and Jensen which provides, "Workmen shall not be required to handle nonunion material," removes the above-described conduct from the proscription of Section 8 (b) (4) (A) under the so-called Conway doctrine. In the Conway Express case,<sup>15</sup> shop stewards, at three establishments of secondary employers, upon advice from the respondent union in that case that a strike was "on", ceased handling freight of a struck primary employer. Each of the three secondary employers acquiesced in its employees' refusal to handle the "struck" goods. In addition, each of these 3 employers was a party to an agreement which reserved to the union the right to refuse to handle such goods. As the secondary employers had, in effect, consented in advance to boycott the "struck" employer, a majority of the Board concluded that the failure of their employees to handle the struck goods "was not in the literal sense a 'strike' or 'refusal' to work, nor was any such concerted insubordination contemplated by the Respondent when it caused the employees to exercise

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<sup>15</sup> International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 294, AF of L (Henry V. Rabouin, d/b/a Conway's Express), 87 NLRB 972, at 981-983, affirmed 195 F. 2d 906, (C.A. 2, 1952).



their contractual privilege." The Board rejected a contention that the contract clause relied on was repugnant to the policy of the Act and therefore invalid.

Subsequently, the problem of the effect of a substantially similar "hot cargo" clause arose in the Pittsburgh Plate Glass case.<sup>16</sup> In that case, again, the secondary employers affirmed their "hot cargo" contracts by acquiescing in their enforcement. The Board found no violation of Section 8 (b) (4) (A), relying on its Conway Express decision, and adding as a further ground that the refusal to handle "struck" freight was not "in the course of \* \* \* employment," within the meaning of Section 8 (b) (4) (A), as the "hot cargo" clause in the contract excluded from required job duties work on such goods.

As in *McAllister Transfer, Inc.*,<sup>17</sup> and *Reilly Cartage Company*,<sup>18</sup> the validity of these decisions is now challenged by the General Counsel, the Trial Examiner in the instant case having felt bound to follow them.

It is well settled that, where an employer, at the request of a union which refrains from the use of threats or direct appeals to his employees, voluntarily agrees to boycott the goods of another employer, there is no violation of Section 8 (b) (4) (A) be-

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<sup>16</sup> *Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135 (Pittsburgh Plate Glass Company)*, 105 NLRB 740 at 743-745..

<sup>17</sup> *McAllister Transfer, Inc.*, *supra*.

<sup>18</sup> *Marie T. Reilly d/b/a Reilly Cartage Company*, 110 NLRB 1742.

cause there has been neither a strike nor inducement or encouragement of employees to engage in such conduct.<sup>19</sup> What an employer may be induced to agree to do at the time the boycott is requested, he may be induced to agree in advance to do by executing a contract containing a "hot cargo" clause. Insofar as such contracts govern the relations of the parties thereto with each other, we do not regard it our province to declare them contrary to public policy. However, we do not agree that unions, which are parties to such contracts, may approach employees of the contracting employer and induce or encourage them to refuse to handle the goods of another employer with immunity from the sanctions of Section 8 (b) (4) (A). In our opinion, such conduct constitutes inducement or encouragement of employees to engage in a concerted refusal to handle goods for an object proscribed by Section 8 (b) (4) (A) no less than it does in the absence of such agreement.<sup>20</sup> Such

<sup>19</sup> Printing Specialties and Paper Converters Union, Local 388, AFL (Sealright Pacific, Ltd), 82 NLRB 271, 272 at fn. 4; Lewis Karlton d/b/a Consolidated Frame Company, 91 NLRB 1295 at 1290; Local Union 878, International Brotherhood of Teamsters, etc. (Arkansas Express, Inc.), 92 NLRB 255.

<sup>20</sup> This is essentially the view expressed by Chairman Farmer in his concurring opinion in the McAllister case, in which he said that if a contrary view were adopted " \* \* \* the Board would place itself in the posture of championing boycott clauses and affirmatively enforcing them as between the parties. This is the inevitable result of giving the agreement crucial weight in evaluating the conduct of the parties, and refusing to find a violation solely be-

conduct is contrary to the express language of the Statute, and therefore cannot be validated by the existence of a contract containing a "hot cargo" clause. In enacting Section 8 (b) (4) (A), Congress intended to protect the public from strikes or concerted refusals interrupting the flow of commerce at points removed from primary labor-management disputes.<sup>21</sup>

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cause of the contract's existence in the face of other evidence which, \* \* \* clearly shows that all the essential statutory elements of an unlawful boycott are nevertheless present."

<sup>21</sup> The preamble of the Act, Section 1 (b), makes it clear that: \* \* \* employers, employees, and labor organizations [should] \* \* \* above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce \* \* \* to prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce. (emphasis added)

With specific reference to Section 8 (b) (4) (A) the following excerpts appear in the legislative history.

Senate Report No. 105 on S. 1126, p. 8 (1 Leg. Hist. 414) stated: Because of the nature of certain of these practices, especially jurisdictional disputes and secondary boycotts and strikes for specifically defined objectives, the committee is convinced that additional procedures must be made available under the National Labor Relations Act in order ade-

The Employer, but not the union, may instruct his employees to cease handling goods sought to be boycotted. Until the Employer instructs his employees that they need not handle the "unfair" product, a strike or concerted refusal to handle such goods constitutes "a strike or concerted refusal in the course of employment" to handle the goods within the meaning of Section 8 (b) (4) (A). In this connection, we disagree with the holding in the Pittsburgh Plate Glass case that the words, " \* \* \* in the course of employment," found in Section 8 (b) (4) (A) have a restrictive meaning. We are persuaded that Congress used this phrase only to distinguish

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quately to protect the public welfare which is inextricably involved in labor disputes.

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Hence, we have provided that the Board, acting in the public interest and not in vindication of purely private rights, may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotts defined as unfair labor practices. (Emphasis added)

Senator Taft stated in debate (93 Cong. Rec. 4323, April 29, 1947): Take a case in which the employer is getting along perfectly with his employees. They agree on wages. Wages and working conditions are satisfactory to both sides. Someone else says to those employees, 'We want you to strike against your employer because he happens to be handling some product which we do not like. We do not think it is made under proper conditions.' Of course if that sort of thing is encouraged there will be hundreds and thou-

between employees in their capacity as employees and employees in their capacity as consumers.

We hold that, regardless of the existence of a "hot cargo" clause, any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present. Accordingly, having found that such conduct occurred, for a proscribed object, we con-

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sidered of strikes in the United States. There is no reason that I can see why we should make it lawful for persons to incite workers to strike when they are perfectly satisfied with their conditions. If their conditions are not satisfactory, then it is perfectly lawful to encourage them to strike. The Senator [Pepper] says they must be encouraged to strike because their employer happens to be doing business with someone the union does not like or with whom it is having trouble or having a strike. On that basis there can be a chain reaction that will tie up the entire United States in a series of sympathetic strikes, if we choose to call them that. (Emphasis added)

Representative Landis stated (93 Cong. Rec. A 1296, March 24, 1947): Secondary boycotts engaged in by labor unions to force a third party, not a party to a primary labor dispute, to force that party to cease using the products of the employer engaged in the primary dispute is an activity which should be made illegal. Secondary boycotts have had the effect of throwing a great many innocent people out of work. As a result of these secondary boycotts many of our citizens have been deprived of the deliveries of milk, bread, meat, fruits, vegetables, and other essentials of life. (Emphasis added)



clude that the Respondents violated Section 8 (b) (4) (A).

The effect of the unfair labor practices on commerce.

The activities of the Respondents, set forth above, occurring in connection with the operations of Paine Lumber Company, Sand Door and Plywood Co., and other employers as described in the Intermediate Report attached hereto, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### The Remedy

Having found that the Respondents violated Section 8 (b) (4) (A) of the Act, as set forth above, we shall order them to cease and desist from such conduct. We shall also order that the Respondents take certain affirmative action designed to effectuate the policies of the Act.

### Conclusions of Law

1. Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, and Los Angeles County District Council of Carpenters are labor or-

To the extent that the Board's decisions in Conway's Express, supra, and Pittsburgh Plate Glass Company, supra, are inconsistent with the majority holding in this case, they are overruled.

ganizations within the meaning of Section 2 (5) of the Act. Nathan Fleisher is business agent of Respondent Local 1976, and an agent of Respondent District Council within the meaning of the Act.

2. By inducing and encouraging employees of Havstad and Jensen to engage in a strike or concerted refusal in the course of their employment to handle or install doors manufactured by Paine Lumber Company, an object thereof being to force and require Havstad and Jensen to cease using, handling or otherwise dealing in the products of Paine Lumber Company and to force or require Sand Door and Plywood Company to cease doing business with Paine Lumber Company, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

#### **Order**

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, and Los Angeles County District Council of Carpenters, and their officers, representatives, successors, assigns, and agents, including Respondent Nathan Fleisher, shall:

1. Cease and desist from inducing or encouraging

the employees of Havstad and Jensen, or any other employer, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services for their employer, where an object thereof is to force or require Havstad and Jensen or any other employer or person to cease using, handling, or otherwise dealing in the products of Paine Lumber Company or any other nonunion manufacturer, or to force or require Said Door and Plywood Co., or any other employer or person, to cease doing business with Paine Lumber Company or any other nonunion manufacturer.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post at their Los Angeles, California, business offices, respectively, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twenty-First Region, shall, after being duly signed by the official representatives of the Respondents, including Nathan Fleisher, be posted by the Respondents Local 1976 and District Council, immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter; in

<sup>23</sup> In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

conspicuous places including all places where notices to members of said labor organizations are customarily posted.

Reasonable steps shall be taken by said Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Twenty-First Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

Dated, August 26, 1955, Washington, D. C.

[Seal]

GUY FARMER, Chairman

BOYD LEEDOM, Member

National Labor Relations Board

Philip Ray Rodgers, Member, concurring:

I am concurring in the result reached herein by Chairman Farmer and Member Leedom only because I am convinced that "hot cargo" clauses are contrary to public policy and cannot therefore serve as a defense to a complaint charging a violation of Section 8 (b) (4) (A) of the Act.

In my joint opinion with Member Beeson in *McAllister Transfer Inc.*, supra, I stated that a careful reading of the legislative history and an analysis of the established principles of law lead to the inevitable conclusion that Section 8 (b) (4) (A) of the Act was specifically intended to protect the public interest. More specifically, as stated in Senate Report No.

105 on S. 1126,<sup>21</sup> the provisions with which we are concerned here were adopted "in order adequately to protect the public welfare which is inextricably involved in labor disputes." I pointed out that it is a necessary concomitant of the protection of the public welfare that protection is also extended to employers and employees as well, but that such protection to private interests was in no way intended to detract from "the public interest that constitutes the very foundation of the policies implicit in these statutory enactments." In adopting these provisions of the Act, Congress clearly adopted a public policy against all secondary boycotts, without distinction as to type or kind. To hold otherwise is to substitute confusion for clarity and to create ambiguities in the face of a clear Congressional intent. To quote from our McAllister opinion:

No amount of ingenuity, it seems to us, can change the simple fact that a "hot cargo" contract is nothing more than a device to immunize in advance the very conduct which Congress in response to a dire public need sought effectively to eliminate. To permit a form of legal sophistry to make possible so flagrant a subterfuge for continuing this well-known abuse in labor disputes is to make a mockery of one of the most significant provisions which Congress wrote into the Act.

In my view of the facts of the instant case, the "hot cargo" contract, as a subterfuge for avoiding the proscriptions of the Act and as an effort at ad-

<sup>21</sup> Senate Report No. 105, p. 8 (1 Leg. Hist. 414).



vance immunization against unfair labor practice findings, is patently unenforceable. It follows therefore as a matter of law that this is not the type of agreement that can justify the conduct engaged in here. It is for this reason that while I concur in the result reached here I cannot join in the majority's rationale.

Dated, August 26, 1955, Washington, D. C.,

PHILIP RAY RODGERS, Member  
National Labor Relations Board

Ivar H. Peterson, Member, dissenting:

I do not agree with the majority of my colleagues that the Board is warranted in asserting jurisdiction here.

The facts with respect to this issue are substantially undisputed. Havstad and Jensen are joint venturers engaged in the State of California in the construction of a hospital building on the campus of the College of Medical Evangelists for the Seventh Day Adventists. This project commenced on July 1, 1952, and was still in progress at the time of the hearing. The nonunion doors were purchased by Havstad and Jensen from Watson and Dreps, millwork contractors in Los Angeles, and were valued at approximately \$9,000. Watson and Dreps purchased the doors from Sand Door and Plywood Co., the charging party, which is also located in and around Los Angeles and is engaged in the wholesale jobbing of doors, plywood, and related building materials.

Watson and Dreps took delivery of the doors at the Sand Door warehouse. The latter, in turn, had purchased the doors from Paine Lumber Company at Oshkosh, Wisconsin, which shipped them directly to Sand Door from Wisconsin. On the present record, the only one of the above-named firms, whose business is sufficiently large so as to afford any possible justification for assertion of jurisdiction is Paine—the Wisconsin manufacturer of the nonunion doors. In reaching its decision to exercise jurisdiction here based upon Paine's operations the majority attempts to analogize the situation to that in the Sound Shingle Case.<sup>25</sup> I do not consider it necessary to quarrel with the characterization of Paine as the primary employer and Haystad and Jensen as the secondary employer. However, I can not accept the majority's further conclusion that merely because such designations are made, ipso facto, there is reason for asserting jurisdiction here. In so doing, the majority is completely disregarding what for me is a critical and determinative difference between the Sound Shingle case and the instant one. Thus, in that case the Canadian manufacturer dealt directly with Sound Shingle, the employer whose employees the union was causing to refuse to work on the particular nonunion products. In the present case, we have two intermediate purchasers of the nonunion doors between Paine and Haystad and Jensen.

I find nothing in either the Jamestown<sup>26</sup> or Sound Shingle cases to support the exercise of jurisdiction.

<sup>25</sup> See footnote 8, *supra*.

<sup>26</sup> See footnote 5, *supra*.

where, as here, the original manufacturer is the only party whose commerce facts happen to come within the Board's standards and its relationship with the ultimate purchaser is so remote. If an analogy is to be drawn between the instant case and other Board decisions, I submit that it is strikingly similar to the Brooks Wood line of cases.<sup>27</sup> In the latter cases, the Board has consistently declined to exercise jurisdiction over a manufacturer of goods which sells them to a purchaser within the same State, which purchaser has the manufacturer ship them directly to still another purchaser within the State, even though the final purchaser does a substantial interstate business. The chain of sales of the nonunion doors is here the same as in the Brooks Wood type of case with the sole exception being that there it was the ultimate purchaser, while in the instant case it is the manufacturer, which does the substantial interstate business. The rationale for the Board's refusal to exercise jurisdiction in the Brooks Wood line of cases was that the particular manufacturer's business is not once, but "twice removed" from interstate commerce. This reasoning is equally applicable here. Although I have agreed with the Board's special treatment of the jurisdictional question in secondary boycott cases as expressed in its Jamestown decision, I consider it an unwarranted extension of the rule laid down in that case to exercise jurisdiction here, despite the fact that the labor dispute in-

<sup>27</sup> Brooks Wood Products, 107 NLRB 237; C. P. Evans Food Stores, Inc., 108 NLRB 1651; McDonald, McLaughlin & Deane, 110 NLRB 1340.

volving Havstad and Jensen is twice removed from the manufacturer whose interstate commerce might be affected thereby.

I think it should be noted that the majority opinion clearly implies that in a product boycott case jurisdiction will be taken regardless of the number of intervening purchasers. Thus, if the manufacturer of nonunion products happens to do a sufficiently large interstate business, even though the goods go to literally a score of intermediate purchasers all of whom, including the ultimate buyer, operate completely intrastate enterprises, the Board will assert jurisdiction solely because the manufacturer is the employer with whom the union primarily has its dispute. I believe that, to say the least, it is unrealistic not to recognize that in such circumstances, and indeed in the instant case as well, the impact of the union's activities at the situs of the secondary employer upon the commerce of the primary employer is relatively insubstantial.

In view of the foregoing, it is my opinion that it will not effectuate the policies of the Act to assert jurisdiction here. Accordingly, I would dismiss the complaint on this ground. However, because of the importance of the principle involved, I have also considered the merits of the case and agree with the views expressed by Member Murdock in his dissenting opinion.

Dated, August 26, 1955, Washington, D. C.

IVAR H. PETERSON, Member  
National Labor Relations Board

Abe Murdock, Member, dissenting:

I concur in Member Peterson's opinion. It is apparent that the assertion of jurisdiction in this case results in a double standard of jurisdiction—a highly restrictive standard for 8 (a) cases and an almost limitless standard for cases involving violations of Section 8(b). However, as a majority of the Board is asserting jurisdiction, I have considered the case on the merits.

In this case the Respondent Union, representing employees of Havstad and Jensen, building contractors, had bargained for and secured by contract an agreement that the Company would not require workmen to handle nonunion material. In the course of constructing a Los Angeles hospital Havstad and Jensen purchased a number of nonunion doors from Watson & Dreps, retailers. The latter had purchased these doors from Sand Door & Plywood Company, wholesalers; which, in turn, had purchased them from the Paine Lumber Co., Ltd., of Oshkosh, Wisconsin. The record is perfectly clear that neither this Union nor any other Union was engaged in a dispute with any of these companies except Havstad and Jensen. That dispute related directly and solely to the Respondent Union's invocation of Havstad and Jensen's contractual commitment not to require employees to handle nonunion material. Despite the fact that the Union acted pursuant to this contract, which a majority of the Board finds to be legal and not opposed to public policy, and despite the fact that the Union was careful to call only to the attention of Havstad and Jensen's foreman the fact that



the doors in question were nonunion, three members of the Board conclude that the Union has engaged in a secondary boycott within the meaning of Section 8 (b) (4) (A). I believe that the several bases of the majority's decision are untenable.

The three members of the majority are, it appears, in disagreement as to the effect of a provision in a collective bargaining contract whereby the employer agrees that its employees will not be required to handle nonunion material. Member Rodgers adheres to his position in *McAllister Transfer, Inc.*,<sup>28</sup> in which he and former Member Beeson held that such contracts were opposed to public policy and were therefore unenforceable. I believe that Member Peterson's and my dissenting opinion in that case is a complete and adequate answer to this view. Chairman Farmer and Member Leedom now contend in this case that such contracts, while not opposed to public policy and presumably enforceable in the courts, are nevertheless no defense to allegations that the contracting Union has induced employees, whom it represents, to engage in a strike or concerted refusal in the course of their employment to handle such nonunion products.

In his concurring opinion in *McAllister Transfer, Inc.*, Chairman Farmer rejected the view of Member Rodgers and former Member Beeson to the effect that that a "hot cargo" clause was "at war with the secondary boycott provisions of Section 8 (b) (4)." In that case he asserted that such a view "glosses

<sup>28</sup> *Supra*.

over the plain language of the Statute which makes it an essential element of an unlawful boycott that the union 'engage in, or induce or encourage \* \* \* employees \* \* \* to engage in a strike or a concerted refusal' to handle the goods of another employer." He did not believe, he indicated, that a strike or a concerted refusal to work was induced where an employer voluntarily, either on an ad hoc basis or by means of a written contract provision, agreed to boycott another employer's products. He pointed out what seemed to him the fallacy in the argument that such contracts were opposed to public policy. Congress, he said, had not forbidden such voluntary acts of employers and it was for Congress, not the Board, to change the law "if conduct of this character is thought to endanger the public welfare." In the instant case he joins Member Leedom in finding that the Union's inducement of employees, despite their employer's voluntary agreement not to require them to handle nonunion material, is "contrary to the express language of the Statute." The language of the Statute, it seems to me, cannot be expressly both ways. I believe Chairman Farmer was right the first time. In a footnote, however, Chairman Farmer and Member Leedom assert that their finding in this case, cited above, is essentially the same view expressed by Chairman Farmer in his concurrence in the *McAllister* case. If this is so, it is, indeed, a puzzling inconsistency because it would mean that Chairman Farmer had taken the position in that case that the plain language of the Statute both permitted and forbade the operation of a hot cargo

clarise. I had thought the language taken from Chairman Farmer's McAllister concurrence, quoted in the above footnote, referred to a situation where, as there, the employer had repudiated his contract and directed his employees to handle hot cargo. This would seem to be supported by his subsequent distinction of the Conway case: "It is impossible to say here, as in Conway, that there was no unlawful 'inducement' or 'refusal' on the part of the employees to handle McAllister freight. This is so for the simple reason that the secondary employers here posted notices to their employees directing them to handle all freight without discrimination."

I am, moreover, at a loss to understand the new rationale which he and Member Leedom expound. First they agree that the inducement of employers to cease doing business with other employers is not unlawful under Section 8 (b) (4) (A). They then concede that what an employer may be induced to do he may be induced in advance to do by the execution of a contract freeing his employees from the duty of handling nonunion material during the term of the contract. Notwithstanding these findings, they thereupon take the position that the Union may not approach the employees it represents and for whose benefit the contract was made to notify them that their contract reserves to them the right not to handle nonunion material. Such notification, they find, induces these employees to engage in a strike, despite their employer's advance permission granting them the right to refrain from performing this work. These conclusions, in my opinion, cannot log-

ically stand together. A contract does not consist of words on a piece of paper. It is a binding agreement between the contracting parties that requires them to behave toward each other in a specific manner under a given set of circumstances, present or future. If they can legally agree, as Chairman Farmer and Member Leedom concede they can, that employees will not be required to handle nonunion material, I know of no authority that would define "as a strike" or a "refusal to work" the union's reliance upon this contractual permission. To find that employees are induced to engage in an act of insubordination against their employer solely on the ground that their own bargaining representative called to their attention the existence of a lawful provision in their lawful contract seems to me an untenable conclusion. It was, in my opinion, the duty of this Union to keep the employees it represented informed at all times of their rights under the contract, including the fact that handling nonunion material was not within the scope of their employment.

The decision of Chairman Farmer and Member Leedom encourages employers to violate their lawful agreements with labor organizations. Indeed, it tells them that they may freely take whatever the Union has given in collective bargaining to secure such an agreement without fear or ever having to pay the *quid pro quo*. It repudiates for an employer a voluntary agreement that he has never repudiated himself. It forbids a union, under penalty of the Board's injunctive processes, to assume that the employer meant what he said when he agreed in advance that

his employees would not have to handle nonunion material. Such a decision gravely and adversely affects the collective bargaining process, which it is the duty of this Board to promote and encourage. In this respect, it does not serve the general welfare and does not effectuate the intent of Congress to minimize strife and establish peaceful collective bargaining in the field of labor relations.

The majority further finds that the Union's object, in this case was "to force or require" Havstad and Jensen to cease using or handling nonunion doors. But that Company had already agreed, as a majority of the Board finds, that it would not require its employees to handle such products. It was not, then, business agent Fleisher's remarks to foreman Steinert which "forced or required" the Company to instruct the carpenters to cease performing this work. The Company was required by its contract, which a majority of this Board finds to be lawful and not opposed to public policy, to free its employees from the duty of handling nonunion material. In this respect, at least, the instant case is entirely distinguishable from the Sound Shingle case,<sup>29</sup> upon which the majority relies. Here the dispute was directly and immediately related to a condition of employment of Havstad and Jensen's employees, a condition resolved through collective bargaining and reduced to writing. Under these circumstances, it seems clear to me that the dispute was primary in nature and that it was not "an object" of the Union to affect the

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<sup>29</sup> Supra.



business relations between Havstad and Jensen and any other employer or person. As Judge Learned Hand has recently pointed out in a scholarly opinion,<sup>30</sup> there must be a distinction between the term "object" under Section 8 (b) (4) and a result that may flow from the Union's action. The liability imposed by this section, he held, "is much more limited than the usual liability for a tort, which extends to any damage that the tortfeasor should reasonably have expected to result from his act." If Congress had not imposed such a distinction, he pointed out, it would have made nearly all strikes unlawful. Where, as in the instant case, a union's objective is clearly and unmistakably limited to a primary dispute, involving an employer's contractual obligation, the fact that this dispute may in some manner affect other employers with whom the union has no dispute at all does not mean that "an object" of the union is to reach these employers and engage in secondary conduct within the meaning of Section 8 (b) (4) (A). Senator Taft's statements on the floor of the Senate, quoted extensively in footnote 21 of the majority's decisions, seems to me to affirmatively support this conclusion. In his view Section 8 (b) (4) (A) made it unlawful to incite workers to strike "when they are perfectly satisfied with their conditions. If their conditions are not satisfactory, then it is perfectly lawful to encourage them to strike." (Emphasis added.) What could be more unsatisfac-

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<sup>30</sup> *Douglas v. Longshoremen's Association*, 36 LRRM 2329, 2332.

tory to a group of employees than the imminent violation by their employer of a condition of their employment, a condition secured through the processes of collective bargaining and incorporated in a contract?

Apart from the foregoing, it seems to me that the majority's conclusion that Havstad and Jensen's foreman, Steinert, was acting solely as an agent of the Union when he instructed several employees not to handle the nonunion doors is unsupportable. The majority bases its finding on the fact that Steinert was a member of the Union and, as such, had agreed to enforce the Union's by-laws and trade rules. It is, however, uncontroverted that Steinert was also the authorized agent of Havstad and Jensen to whom the employees looked for instructions in the performance of their duties. If Steinert was acting for the Union he was no less under the common law rules of agency acting on behalf of Havstad and Jensen, who had authorized him to represent the Company and speak for it in supervising the work of these employees. At most, therefore, any statements or actions of Steinert with regard to his work instructions to these employees must be construed as the joint action of both the Union and the Company. It is incomprehensible to me how the majority can conclude that employees, obediently following the instructions of their own foreman, are thereby being induced to engage in a strike or a concerted refusal to work for their employer. Indeed, I would suppose that the employees would be engaged in insubordination if they refused to follow Steinert's instruc-

tions. The fact that Havstad and Jensen permitted Steinert, its agent, to agree to enforce union rules seems to me to indicate nothing more than that the Company itself had consented to this procedure and made itself a party to such conduct by its foreman. To ignore Steinert's status as the Company's spokesman and to find, rather, that he represented only the Union and thus induced a strike of the employees he supervised, seems to me an unwarranted and unreasonable conclusion.

For these reasons I dissent.

Dated, August 26, 1955, Washington, D.C.

ABE MURDOCK, Member  
National Labor Relations Board

## APPENDIX A

Notice to All Members of Local 1976 and of Los Angeles County District Council of Carpenters, and Employees of Havstad and Jensen: Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

We will not induce or encourage the employees of Havstad and Jensen, or any other employer, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any

services for their employer where an object thereof is to force or require Havstad and Jensen or any other employer or person to cease using, handling, or otherwise dealing in the products of Paine Lumber Company or any other nonunion manufacturer, or to force or require Sand Door and Plywood Co. or any other employer or person to cease doing business with Paine Lumber Company or any other nonunion manufacturer.

Dated.....

Los Angeles County District  
Council of Carpenters

By .....  
(Representative) (Title)

Dated.....

Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL

By .....  
(Representative) (Title)

Dated.....

By .....  
Nathan Fleisher, Business Representative

Affidavit of Service and Return Postal Receipts attached.

In the United States Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

LOCAL 1976, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMER-  
ICA, AFL, AND LOS ANGELES COUNTY  
DISTRICT COUNCIL OF CARPENTERS,  
AND NATHAN FLEISHER,  
Respondents.

CERTIFICATE OF THE NATIONAL  
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, its agent, Nathan Fleisher, and Los Angeles County District Council of Carpenters and Sand Door and Plywood Co.", Case No. 21-CC-189 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.



Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Wallace E. Royster on October 18, 19, 20 and 22, 1954, together with all exhibits introduced in evidence.

2. Copy of Trial Examiner Royster's Intermediate Report and Recommended Order (annexed to item 9 hereof) and copy of Order transferring case to the Board, both dated December 13, 1954; together with affidavit of service and United States Post Office return receipts thereof.

3. General Counsel's exceptions to the Intermediate Report received January 31, 1955.

4. Respondents' exceptions to the Intermediate Report received January 31, 1955.

5. Charging Party's exceptions to the Intermediate Report received January 31, 1955.

6. Copy of notice, dated May 31, 1955, of hearing to be held before the National Labor Relations Board on July 7, 1955.

7. Letter from the Chamber of Commerce of the United States, dated June 15, 1955, requesting leave to file a brief amicus curiae.

8. Copy of Board's telegram to all parties, dated June 21, 1955, granting the request of the Chamber of Commerce of the United States to file brief amicus curiae.

9. Copy of Decision and Order issued by the National Labor Relations Board on August 26, 1955, with Intermediate Report and Recommended Order

annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 9th day of March, 1956.

[Seal]      /s/ FRANK M. KLEILER,  
Executive Secretary, National  
Labor Relations Board

[Endorsed]: No. 15026. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, and Los Angeles County District Council of Carpenters and Nathan Fleisher, Respondents. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed March 14, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit

In the United States Court of Appeals  
for the Ninth Circuit

No. 15026

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

LOCAL 1976, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMER-  
ICA, AFL, AND LOS ANGELES COUNTY  
DISTRICT COUNCIL OF CARPENTERS,  
AND NATHAN FLEISHER,  
Respondents.

PETITION FOR ENFORCEMENT OF AN OR-  
DER OF THE NATIONAL LABOR RELA-  
TIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to  
the National Labor Relations Act, as amended (61  
Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter  
called the Act, respectfully petitions this Court for  
the enforcement of its order against Respondents,  
Local 1976, United Brotherhood of Carpenters and  
Joiners of America, AFL (hereinafter called Re-  
spondent Local 1976), and Los Angeles County Dis-  
trict Council of Carpenters, (hereinafter called Dis-  
trict Council), and their officers, representatives,  
successors, assigns, and agents, including Respond-

ent Nathan Fleisher. The proceeding resulting in said order is known upon the records of the Board as "Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, its agent, Nathan Fleisher, and Los Angeles County District Council of Carpenters and Sand Door and Plywood Co., Case No. 21-CC-189".

In support of this petition the Board respectfully shows:

(1) Respondents Local 1976 and District Council are labor organizations and Respondent Nathan Fleisher is the business agent of Local 1976 and an agent of the District Council. All said Respondents are engaged in promoting and protecting the interests of their members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (c) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on August 26, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondents Local 1976 and District Council, and their officers, representatives, successors, assigns, and agents, including Respondent Nathan Fleisher. On the same date, the Board's Decision and Order was served upon Respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondents' counsel.

(3) Pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the Board is certi-

fying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondents Local 1976 and District Council, and their officers, representatives, successors, assigns, and agents, including Respondent Nathan Fleisher, to comply therewith.

Dated at Washington, D. C., this 1st day of February, 1956.

/s/ MARCEL MALLET-PREVOST,

Assistant General Counsel, National  
Labor Relations Board

[Endorsed]: Filed Feb. 3, 1956. Paul P. O'Brien,  
Clerk.



[Title of U. S. Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Come now Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, Los Angeles County District Council of Carpenters and Nathan Fleisher, hereinafter referred to as respondents, and for answer to the petition of the National Labor Relations Board for enforcement of an Order of the National Labor Relations Board, admits, deny and allege as follows:

I.

Answering Paragraph 1 of the petitioners, respondents admit that Los Angeles County District Council of Carpenters and Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, are labor organizations. Respondents further admit that respondent Nathan Fleisher is the Business Agent of respondent Local 1976, but deny that the said Fleisher is the Business Agent of respondent District Council. Respondents admit they are engaged in promoting and protecting the interests of their respective members in California within the judicial circuit, but deny, generally and specifically, that respondents, or any of them, committed any unfair labor practices within this or any other judicial circuit or that respondents have committed any unfair labor practices of any nature.

Respondents deny that by virtue of Section 10

(e) of the National Labor Relations Act this Court has jurisdiction of these proceedings.

## II.

Answering Paragraph 2 of the petition, respondents deny that due proceedings were had before the National Labor Relations Board. Respondents admit that on or about August 21, 1955 the National Labor Relations Board issued a purported findings of fact and conclusions of law and purported Order to respondents, but respondents deny that said purported findings of fact and conclusions of law and the purported Order were supported by substantial evidence and aver that the purported conclusions of law and purported Order were erroneous and are contrary to the law of the case. Respondents admit that the purported Decision and Order was served upon respondents.

## III.

Answering Paragraph 3 of the petition, respondents aver that they are without information or knowledge on which to form a belief as to the allegations of said paragraph, and basing their answer on that ground deny each and every allegation therein contained.

## IV.

Affirmatively, respondents allege:

1. That the National Labor Relations Board does not have jurisdiction over either of the respondents on the subject matter of the purported Decision and Order.

2. That respondents have not committed any unfair labor practices.

3. That the purported findings of fact, conclusions of law and Order are not supported by substantial evidence on the record considered as a whole.

4. That the purported findings of fact, conclusions of law and the purported Order are each and all contrary to law.

Wherefore, having fully answered to the petition, respondents, and each of them, pray that the petition be denied and that the Court enter an Order setting aside in full the purported Order of the National Labor Relations Board.

Dated at Los Angeles, California, this 18th day of February, 1956.

ARTHUR GARRETT and

JAMES M. NICOSON

/s/ By JAMES M. NICOSON,

Attorneys for Respondents

Affidavit of Service by Mail attached.

[Endorsed]: Filed Feb. 20, 1956. Paul P. O'Brien,  
Clerk.

[Title of U. S. Court of Appeals and Cause.]

**STATEMENT OF POINTS ON WHICH  
RESPONDENTS INTEND TO RELY**

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The Respondents, Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, Los Angeles County District Council of Carpenters, and Nathan Fleisher, in conformity with the rules of this Court hereby state the following points on which they intend to rely herein:

1. The National Labor Relations Board did not have jurisdiction over the respondents, Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, Los Angeles County District Council of Carpenters, and Nathan Fleisher.

2. That the proceedings before this Board were unconstitutional and void in that they deprive respondents, and each of them, of the rights guaranteed to them by the Fifth Amendment to the Constitution of the United States.

3. That the National Labor Relations Board's Findings of Fact and Conclusions of Law that respondents, and each of them, have committed unfair labor practices are not supported by substantial evidence in the record considered as a whole, and therefore are void and of no effect. That the National Labor Relations Board's Order issued herein is not supported by substantial evidence in the record con-

sidered as a whole, and therefore is void and of no effect.

4. That the National Labor Relations Board's Findings of Fact, Conclusions of Law and Order issued herein are contrary to law.

5. That the National Labor Relations Board's Findings of Fact and Conclusions of Law that respondents; and each of them, engaged in conduct in violation of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended, are not supported by substantial evidence in the record considered as a whole, and are therefore void and of no effect.

Respectfully submitted,

ARTHUR GARRETT and  
JAMES M. NICOSON

/s/ By JAMES M. NICOSON,  
Attorneys for Respondents

[Endorsed]: Filed Feb. 20, 1956, Paul P. O'Brien,  
Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH  
PETITIONER INTENDS TO RELY

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, the petitioner herein, pursuant to Rule F7 (6) of the rules.



of this Court, files this statement of points upon which it intends to rely in the above entitled proceeding and this designation of parts of the record to be printed:

I.

Statement of Points

1. The Board properly asserted jurisdiction over respondents.
2. The Board properly found that respondents induced or encouraged employees to engage in a concerted refusal to install "non-union" doors in violation of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended.
3. The Board's order is in all respects valid and proper.
4. A decree should be entered enforcing the Board's order in full.

\* \* \* \* \*

Dated at Washington, D. C. this 9th day of March, 1956.

/s/ MARCEL MALLET-PREVOST

Assistant General Counsel National  
Labor Relations Board

[Endorsed]: Filed March 12, 1956. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board  
Twenty-First Region

Case No. 21-CC-189

In the Matter of: LOCAL 1976, UNITED  
BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA, AFL, its agent,  
NATHAN FLEISHER, AND DISTRICT  
COUNCIL OF THE UNITED BROTHER-  
HOOD OF CARPENTERS AND JOINERS  
OF AMERICA OF LOS ANGELES  
COUNTY and SAND DOOR AND PLY-  
WOOD CO.

### TRANSCRIPT OF PROCEEDINGS

Room 704, 111 West Seventh Street, Los Angeles,  
California. Monday, October, 1954.

Pursuant to notice, the above-entitled matter  
came on for hearing at 10:00 o'clock, a.m.

Before: Wallace E. Royster, Trial Examiner.

Appearances: George H. O'Brien, 111 West  
Seventh Street, Los Angeles, California, appearing  
on behalf of the General Counsel of the National  
Labor Relations Board. Arthur Garrett and James  
M. Nicoson, 2200 West Seventh Street, Los Angeles,  
California, appearing on behalf of the Respondent.  
Howard F. LeBaron, 111 West Seventh Street, Los  
Angeles, California, appearing on behalf of the Sand  
Door and Plywood Company. [1\*]

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\* Page numbering appearing at top of page of original certified  
Reporter's Transcript.

Proceedings

Trial Examiner Royster: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Local 1976, United Brotherhood of Carpenters and Joiners of America, AF or L, its agent, Nathan Fleisher, and District Council of the United Brotherhood of Carpenters and Joiners of America of Los Angeles County, upon a charge filed by Sand Door and Plywood Company in Case No. 21-CC-189.

My name is Wallace E. Royster, the Trial Examiner designated to hear the evidence and to make recommendations to the Board with respect to findings of fact and conclusions of law.

Will counsel please state their appearances for the record?

Mr. O'Brien: Appearing for the General Counsel of the National Labor Relations Board, George J. Bott, George H. O'Brien, address in care of National Labor Relations Board, Room 704, 111 West Seventh Street, Los Angeles, California.

Trial Examiner: All right, we will go right around the table, gentlemen.

Mr. LeBaron: Appearing for the Sand Door and Plywood Company, Howard F. LeBaron, 111 West Seventh Street, Room 1024, Los Angeles.

Mr. Nicoson: Appearing for the respondents, Arthur Garrett and James M. Nicoson, 2200 West Seventh Street, Los Angeles, California. [3]

\* \* \* \* \*

Mr. O'Brien: Mr. Examiner, I shall ask the reporter to mark for identification the following documents:

As General Counsel's Exhibit 1-A, the Charge filed August 23, 1954.

As General Counsel's Exhibit 1-B, the Affidavit of Service by mail of the Initial Contract Letter, Copy of Charge.

As General Counsel's Exhibit 1-C, the Complaint issued September 24, 1954.

As General Counsel's Exhibit 1-D, the Notice of Hearing setting the hearing in the instant matter for this date, time and place.

As General Counsel's Exhibit 1-E, an Affidavit of Service of the foregoing documents.

And as General Counsel's Exhibit 1-F, the Answer of Respondent which was filed October 1, 1954. Now, I have not [4] checked to see whether it was filed during the time limit by the rules, but if it was late, General Counsel makes no objection and no point of it.

As General Counsel's Exhibit 1-G, an Amended Charge filed October 10, 1954.

As General Counsel's Exhibit 1-H, an Amendment to the Complaint, dated October 15, 1954.

And as General Counsel's Exhibit 1-I, an Affidavit of Service of the foregoing documents.

I will now offer General Counsel's Exhibits Nos. 1-A through 1-I in evidence.

\* \* \* \* \*

Mr. Nicolson: We have no objection to the receipt of the exhibits. [5]

Trial Examiner: General Counsel's Exhibits 1-A through 1-I are received in evidence.

(Thereupon the documents above referred to were marked as General Counsel's Exhibits Nos. 1-A to 1-I and were received in evidence.)

Mr. Nicoson: I would like to move at this time to amend the Answer to further deny the Amendment.

Trial Examiner: Very well. Is that agreeable to counsel?

Mr. O'Brien: Certainly.

Trial Examiner: The Answer is so amended.

Mr. O'Brien: I would like to call Mrs. Kaiser.

### BONNIE LOU KAISER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. O'Brien): Will you please state your full name?

A. Bonnie Lou Kaiser.

Q. And were you recently married?

A. Yes, I was.

Q. And what was your former name, Mrs. Kaiser?

A. Bonnie Lou Sweitz.

Q. And by whom are you employed?

A. I was employed by Havstad and Jensen.

Q. Until when, ma'am?

A. A week ago today. [6]



(Testimony of Bonnie Lou Kaiser.)

Q. Were you employed by Havstad and Jensen on August 17, 1954? A. I was.

Q. What was your job at that time?

A. Secretarial and office work.

Q. And on August 17 were you in the office of Havstad and Jensen or on some building project of theirs? A. I was in the office.

Q. Where was the office?

A. 1721 New Jersey Street.

Q. On that day, August 17, 1954, did you have a conversation with a Mr. Nathan Fleisher?

A. I did.

Q. About what time of day, if you recall?

A. It was in the forenoon.

Q. Do you have any recollection of about what time it was?

A. Well, it was between around 10 or 11 o'clock. I would say, between 10 or 11.

Q. Was anyone present besides and Mr. Fleisher?

A. Yes.

Q. Who?

A. Mr. Bob Arnett—I guess you'd say Robert Arnett.

Q. And who is Mr. Arnett?

A. He is from the R. W. Downer Company, salesman. [7]

\* \* \* \* \*

Q. (By Mr. O'Brien): Did Mr. Arnett take part in your conversation with Mr. Fleisher?

A. I don't recall.

(Testimony of Bonnie Lou Kaiser.)

Q. What did you say to Mr. Fleisher and what did he say to you?

Mr. Nicoson: Objected to on the grounds that no proper foundation has been laid.

Mr. O'Brien: Mr. Fleisher is named as the respondent, it is admitted in the Answer that he is a business agent of the respondent local.

Trial Examiner: I will overrule the objection; you may answer.

The Witness: When he came into the office, I asked him what was the deal on the doors, why couldn't we hang them.

Mr. Nicoson: I cannot hear the witness.

Trial Examiner: Will you please try to keep your voice up so all the people present may hear you.

The Witness: Well, when I asked him that as to why we couldn't hang the doors, he said: "They are non-union, they do not have a label and no union man can touch those doors." And I said: "Why is it you have had this information for six months and you didn't notify us or let us know." And he said he took it up with the District Council and they said to let it go at the time. And then he said: "Well, I could have told you [8] yesterday, but I didn't." And I said that that still is not notice, you didn't tell us so how did we know. And then he said: "Well, I waited around here for three hours here to tell you." And I said that was still not giving notice because we were ready to hang the doors then. And then he says, "They are not union, no union man can touch those doors."

(Testimony of Bonnie Lou Kaiser.)

Q. Do you recall any more of the conversation with him?

A. No, we discussed it back and forth, you know, but that was the main thing, he said that they were not union label and that no union man could touch the doors.

Q. And is that just about everything that you remember about that conversation with Mr. Fleisher?

A. Well, I can't remember much more than that; that was just about the main discussion on it.

Q. On that occasion was a telephone call made by you or was a telephone call received?

A. Yes, I was talking—  
Mr. Nicoson: Just a moment.

Trial Examiner: You have answered the question.

Q. (By Mr. O'Brien): Did you make the telephone call or did someone call you?

A. Well, at the time that Mr. Fleisher was in the office someone called me.

Q. And from whom did you receive that telephone call?     A. Mr. Baron of Sand Door. [9]

Q. Now, after speaking to Mr. Baron, did you hand the telephone to Mr. Fleisher?     A. I did.

Q. And did you hear what Mr. Fleisher said on the telephone to Mr. Baron?     A. Yes, I did.

Q. What did Mr. Fleisher say on the telephone to Mr. Baron?

A. He said that the District Council told me the doors didn't have a label on them and that no union

(Testimony of Bonnie Lou Kaiser.)

man could touch those doors as long as they didn't have a label.

Q. On any other occasion, did you have any conversation with Mr. Fleisher about these doors?

A. Well, well, six months prior to that when he said where are you getting—

Mr. Nicoson: Just a minute. Your Honor, please, I took the question to be a foundation question.

Trial Examiner: I will let the answer remain as yes and strike the remainder.

\* \* \* \* \*

Q. (By Mr. O'Brien): And where did that conversation take [10] place? A. In the office.

Q. In the same office that you referred to before, Havstad and Jensen? A. That is correct.

Q. Do you recall whether anyone else was present besides you and Mr. Fleisher?

A. I don't recall if there was anyone else there.

Q. And what was that conversation?

A. It was when he asked me where we were getting our doors for the job and what the name of the company was, and I gave him the name of the company and also the telephone number, and he was going to check on the doors he said.

\* \* \* \* \*

Q. (By Mr. LeBaron): Mrs. Sweitz, you gave the address of the office as 1721 New Jersey Street; would you describe where that is, not the address, but the type of business that is being done there?

A. Well, it is on the job of the White Memorial Hospital job.

(Testimony of Bonnie Lou Kaiser.)

Q. And by that do you mean the construction site of the [11] hospital?

A. Yes, the construction site.

\* \* \* \* \*

Cross Examination

Q. (By Mr. Nicoson): Mrs. Kaiser, while you were employed by Havstad and Jensen, I believe you said your duties were that of a secretary.

A. That is right.

Q. For Mr. Havstad and Jensen?

A. Secretary and office worker.

Q. You worked rather closely with them? [12]

A. That is right.

Q. And did you handle any personal correspondence?      A. Yes, some in the office.

Q. And you took your instructions directly from them; is that right?      A. Yes.

Q. From them and Mr. Nicholson, who is the superintendant of construction on the White Memorial Hospital project; is that correct?

A. That is correct.

Q. Now, did you have any other duties than those which you have described as secretary?

A. The office work, the payroll.

Q. Office work, and you say that you prepared the payroll?      A. And checked the time.

Q. Did you have any other duties?

A. Well, the time—

Q. Is that about all of your duties as you have described them?      A. I believe that is it.



(Testimony of Bonnie Lou Kaiser.)

Q. That constitutes all of the duties that you performed out there? A. Yes.

Q. You didn't do any carpentry work, I presume?

A. No.

Q. And you were not assigned to hang any doors; is that correct? [13]

A. Not very likely.

Q. Not very likely,—were you or weren't you?

A. No.

Q. In other words, your entire tour of duty was confined to secretarial work within the office; is that correct? A. That is correct.

\* \* \* \* \*

### JAMES LAYTON NICHOLSON

a witness called by and on behalf of the General Counsel, being [14] first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. O'Brien): Will you state your name, please, sir?

A. James Layton Nicholson. N-i-c-h-o-l-s-o-n.

Q. And your residence address, sir?

A. 1151 North Howard, Glendale.

Mr. O'Brien: Mr. Nicolson, do you have a copy of the constitution of the United Brotherhood of Carpenters and Joiners of America?

Mr. Nicolson: No, I don't have it, but I will stipulate that I will obtain one, and that it may go in. Do you need it right now?

Mr. O'Brien: I guess not. And I also would

(Testimony of James Layton Nicholson.)

like to have the copy of the By-Laws and Trade Rules of the Los Angeles District Council of Carpenters.

Mr. Nicoson: That I can supply, I think—let's see if there are any trade secrets in there.

Mr. O'Brien: Thank you. Mr. Nicoson has handed me the By-Laws and Trade Rules of the Los Angeles County District Council of Carpenters. I would like to inquire of Mr. Nicoson if they are the rules that were in effect during August of 1954?

Mr. Nicoson: That is my understanding.

Mr. O'Brien: In view of the statement of Mr. Nicoson, I would like to offer as General Counsel's Exhibit No. 2 the By-laws and Trade Rules of the Los Angeles County District Council [15] of Carpenters.

Mr. Nicoson: No objection.

Trial Examiner: It will be received.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2 and was received in evidence.)

[See pages 198-200.]

Mr. O'Brien: And in that same connection so we can have the proper name of the respondent, the official name of the Council is that as it appears on General Counsel's Exhibit 2, Mr. Nicoson?

Mr. Nicoson: That is correct—you mean the official name of the Los Angeles District Council of Carpenters?

Mr. O'Brien: Yes.

(Testimony of James Layton Nicholson.)

Mr. Nicoson: I will also stipulate with you that the Complaint may be amended to show the true name of the District Council.

Mr. O'Brien: That same amendment should go to the Complaint, the Charges and the Answer, I think it is also misnamed in the Answer.

Trial Examiner: Is the stipulation clear now as to what shall appear in the caption of the Complaint as descriptive of the District Council?

Mr. Nicoson: I am willing to do this, if Your Honor please, wherever in the formal papers heretofore received in evidence, the name of the Los Angeles District Council of Carpenters appears improperly, the documents may be corrected [16] to show the proper and true name.

Trial Examiner: Is that agreeable to all parties?

Mr. O'Brien: Yes, sir.

Mr. LeBaron: Yes, sir.

Trial Examiner: The formal documents in the file then are amended to incorporate the true and correct name, Los Angeles County District Council of Carpenters wherever the designation District Council appears.

\* \* \* \* \*

Q. (By Mr. O'Brien): By whom are you employed, Mr. Nicholson?

A. Havstad and Jensen.

Q. And what is your present assignment by your employer?

A. I am general superintendent of construction.

Q. Of what construction?

(Testimony of James Layton Nicholson.)

A. Of all the work on the project, the White Memorial Hospital project or College of Medical Evangelists.

Q. When did you first receive that assignment, if you know?

A. It was on the 1st day of July in 1952.

Q. When was construction started on that project?

A. On the 1st day of July, 1952, we started the preliminary work then. [17]

Q. And have you been in charge of this construction ever since?      A. That is right. \* \* \* \* \*

Q. (By Mr. O'Brien): And as general superintendent, what are your duties, sir?

A. My duties is to see that the job is completed according to plans and specifications.

Q. What trades are under your supervision on this job?

A. Well, I oversee all of the trades, but directly under my supervision is the carpenters and laborers.

Q. Now, over carpenters and laborers do you have a foreman?      A. That is right.

Q. Who is he?      A. Arnold Steinert.

Q. By the way, when is your target date for completion of this problem? \* \* \* \* \* [18]

Trial Examiner: Will the reporter read the question?

(Question read.)

Trial Examiner: You may answer that.

The Witness: Well, the basement, the ground

(Testimony of James Layton Nicholson.)

floor, the first, second, and third floors is supposed to be completed by December 15th, for which we have got partial occupancy okayed [19] by the City.

Trial Examiner: Of this year?

The Witness: Of this year. \* \* \* \* \*

Q. (By Mr. O'Brien): What work remains to be done before December 15th?

A. The main work that remains to be done is hanging of the doors and the setting of a few metal cabinets on the nurses' stations, and they are putting down the finished floor coverings in the halls now, the rooms are completed.

Q. And what doors have to be hung?

A. It is the main wood doors. [20]

\* \* \* \* \*

Trial Examiner: The objection is overruled.

What doors remained to be hung? Is that the question?

Mr. O'Brien: That is right.

The Witness: It is all of the wood doors throughout the building that were purchased through Sand Door. In other words, the doors going into all of the rooms, the doors in the toilet rooms and inside are metal, but as to all the wood doors in the job. And then the fire doors which are Durand Doors, and they have been released to us to hang.

Mr. Garrett: I move to strike that entire answer as being non-responsive. The General Counsel is being permitted to evoke argument from this



(Testimony of James Layton Nicholson.)

witness and the response to the last question was to merely state what doors there were to be hung, and this witness has been allowed to go into a general dissertation about the situation, including statements as to what doors had been hung and what doors have not been hung and his conclusions as to why they haven't been hung.

Trial Examiner: I didn't hear any conclusions. True or not the answer went beyond the requirements of the question, but I see nothing prejudicial, and the motion is denied. [21].

\* \* \* \* \*

Q. (By Mr. O'Brien): How many doors remain to be hung? A. 398. [22]

\* \* \* \* \*

Q. (By Mr. O'Brien): Now where are those 398 doors?

A. They are in the lobby right where they were before they told us to stop and some of them on the ground floor and some of them on the second floor where the laborers were putting them before the order came through to stop.

\* \* \* \* \*

Mr. Garrett: We want to move to strike portions of the answer as not being responsive, being conclusions of the witness and being argumentative. We now move to strike the portion of the first sentence of the answer following the words, "Where they were", we move to strike the following words, "When they told us to stop".

(Testimony of James Layton Nicholson.)

Trial Examiner: All right, let that go out. [23]

\* \* \* \* \*

Q. (By Mr. O'Brien): Do you know when these doors were delivered to the job?

A. They were delivered—

Trial Examiner: The question is, do you know.

Q. (By Mr. O'Brien): Approximately when, sir?

A. They started delivering on the Friday before August 17th.

Q. Did you give Mr. Steinert any instructions relative to the doors? A. I had him start—

Mr. Garrett: Just a minute.

The Witness: Yes, pardon me.

Q. (By Mr. O'Brien): What were your instructions to Mr. Steinert?

Mr. Garrett: Objected to—

Trial Examiner: Overruled.

The Witness: I told him—

Mr. Garrett: We didn't state the grounds.

Mr. Nicolson: We didn't even quite get the [24] word objection out.

Trial Examiner: I will overrule the objection and you can argue it in the brief. Let him answer.

Mr. Garrett: I want the grounds of my objection in the record.

Trial Examiner: It is not going in and I am instructing the witness.

Mr. Garrett: We demand the right to have it in.

Trial Examiner: It is denied to you. You may answer.

(Testimony of James Layton Nicholson.)

The Witness: I told my foreman, Mr. Steinert, to get the carpenters started setting the jigs and getting the horses ready and the benches ready to start hanging the doors and——

\* \* \* \* \*

Q. (By Mr. O'Brien): Approximately when did you give these [25] instructions to Mr. Steinert; was it Friday or Monday or Tuesday or when?

A. Those instructions were given before the doors arrived. I had a carpenter sent out to hang the doors and he was setting up the jigs to hang the doors before they arrived.

Q. What other preparations did you make?

Mr. Garrett: Just a moment. I am going to make these motions as long as——

Mr. O'Brien: May the reporter read the objection.

Trial Examiner: I think the objection is to the previous answer. You may read it.

(Objection read.)

Trial Examiner: Read the answer.

(Answer read.)

Mr. Garrett: We move to strike all of the answer following the words "those instructions were given before the doors arrived".

Trial Examiner: I will grant your motion. Now, Mr. Nicholson, will you please listen to all of the questions and then if you will give your answer to the question you can save a good deal of this argument, I think. At least, we will try that.

(Testimony of James Layton Nicholson.)

Q. (By Mr. O'Brien): What preparations had you made for hanging the doors?

A. We—— [26]

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial and hearsay as to these respondents and not binding on these respondents.

Trial Examiner: I will overrule the objection. You may answer.

The Witness: I had the jigs made up and the horses and the benches and everything was ready to hang the doors and I had the laborers starting to place the doors on the individual floors where they belonged.

Mr. Garrett: We will move to strike that portion of the answer beginning, "and had the laborers starting", on the grounds that it is not responsive and it is argumentative.

Trial Examiner: Denied. [27]

\* \* \* \* \*

Q. (By Mr. O'Brien): You described some of the preparations you made for hanging the doors. What other preparations did you make?

A. Just to place the doors around to the individual floors where they belonged.

Q. Before the doors arrived, how many carpenters did you have on the job?

A. Oh, well, let me see. I had about eight all told on the job.

\* \* \* \* \*

Q. (By Mr. O'Brien): Is the job that you are running there a union or open shop?

(Testimony of James Layton Nicholson.)

A. It is a union—— [28]

\* \* \* \* \*

Q. (By Mr. O'Brien): Did you make any arrangement to secure any additional carpenters?

A. Yes.

Q. What arrangement did you make?

A. I had asked the business agent to find me some good door men and to have them to come out to the job.

Q. The business agent being whom?

A. Nathan Fleisher.

Q. And when did you speak to the business agent about having more men?

A. That is before the doors arrived I had the notice that the doors were——[29].

Trial Examiner: You have answered the question.

Q. (By Mr. O'Brien): And did any additional men come out? A. Not at that time.

Q. Now, would you describe the operation of hanging the 398 doors, what each man does on the job?

Mr. Garrett: Objected to as being incompetent, irrelevant and immaterial. Objected to as no proper foundation has been laid.

Trial Examiner: Overruled.

The Witness: The procedure we follow on a job like this is, we have two men go ahead with electric plane and jigs and to have them pre-fit the doors. And then two men follow up with routers and the



(Testimony of James Layton Nicholson.)

bottom plates is put on and two more following up to bore the locks.

Q. And following that?

A. And then the doors are hung.

Q. And these men that you refer—

Mr. Garrett: One moment. All right, thank you.

Q. These men that you refer to, are they carpenters or laborers or some combination of laborer and carpenter?

Mr. Nicoson: What men?

Mr. O'Brien: The men just referred to in the prior answer.

The Witness: They are carpenters.

Q. (By Mr. O'Brien): Do any of the laborers participate in [30] the hanging of the doors?

A. All they do is to distribute the doors to the individual floors.

Q. Have you described the plan that you intended to use on the White Memorial job?

Mr. Nicoson: Just a minute. Objected to as to what he intended to use.

Trial Examiner: I will overrule the objection. You may answer.

The Witness: That is correct.

Q. (By Mr. O'Brien): Now, calling your attention to August 17th, approximately what time did you arrive at the jobsite?

A. As near as I can recall, it was around 11 o'clock.

Q. And what was the first thing that you observed?

(Testimony of James Layton Nicholson.)

A. I went to the office first thing.

Q. You went to the office. And who did you see there?

A. Mrs. Sweitz, the secretary.

Q. And did you receive a report from her?

A. Yes.

Mr. Garrett: Just a moment, please. Pardon me, no objection.

Q. (By Mr. O'Brien): What was that report?

Mr. Garrett: Just a moment, please. Objected to as no foundation laid, objected to as being hearsay as to these respondents. Objected to as being not the best evidence. By the way, I am told by counsel that the witness being referred to has already been on the stand this morning. And objected to as calling for a conclusion of this witness. That last objection relates to the use of the word "report".

Trial Examiner: Of course, it seems probable that this is hearsay.

\* \* \* \* \*

Trial Examiner: I understand all that. Now the question is, are you attempting to adduce through this witness to [32] establish as a matter of fact anything said to him by Mrs. Kaiser or Mrs. Sweitz in this connection, or are you offering it for the purpose to explain some action which he may have taken based on what he heard?

Mr. O'Brien: Solely the latter, Mr. Examiner.

Trial Examiner: I will overrule it.

Mr. Garrett: May the testimony be received for that limited purpose only?

(Testimony of James Layton Nicholson.)

Trial Examiner: Yes.

\* \* \* \* \*

Trial Examiner: The last question was what did she report. You may answer.

The Witness: Mrs. Sweitz reported, when I came in the office she says Mr. Fleisher had been on the job and has called the carpenters off from hanging the doors, and she says he is now out in the building.

Trial Examiner: All right.

Q. (By Mr. O'Brien): So what did you do?

A. So I started out to the jobsite.

Q. What was the first thing you observed on the jobsite?

A. ~~When~~ I came into the lobby I observed that the laborers that was supposed to be placing the doors around were not working at the time.

Q. And did you speak to any of the laborers?

A. I did.

Q. What information did you obtain, if any, from the laborers?

Mr. Nicolson: Just a minute, your Honor, objected to on the grounds that it is hearsay. There are no laborers involved in this.

Trial Examiner: Well, it can have a bearing here only as it might explain further action by the witness and I will receive it solely for that purpose and not as intended to establish anything that the laborers may have told him. I will overrule it.

\* \* \* \* \*

Trial Examiner: Let's find out who. Maybe the witness can tell us.

(Testimony of James Layton Nicholson.)

The Witness: Well, a fellow by the name of Brown was the one laborer. I don't recall the other two, I had three, but I don't recall the other two names but Brown is one of them. All they said is that the union stopped them from hanging the doors, didn't say who but said the union and they was waiting for my foreman to replace them or, in other words, give them other duties is what I am trying to say.

Q. (By Mr. O'Brien): Then what did you do?

A. I went on down to the ground floor directly below the main lobby. [34]

Q. And what did you observe there?

A. When I got down to the foot of the stairs Nathan Fleisher and Max Levine and—wait a minute, pardon me, and Finklestein, Abe Finklestein, were standing there talking, and Arnold Steinert, the foreman. And then Levine was there, when I got to the foot of the stairs he walked off.

Q. Let's get these people identified. You say Nathan Fleisher was there; is that correct?

A. That is right.

Q. And who is Max Levine?

A. He is one of my carpenters, or was at that time.

Q. Max Levine—

A. It was Abe Finklestein.

Q. All right. Abe Finklestein. And you say Arnold Steinert, the foreman?

A. Arnold, yes, the foreman. And Levine was

(Testimony of James Layton Nicholson.)

there and when I came down to the foot of the stairs he walked off.

And did you have a conversation with Nathan Fleisher? A. Yes.

Q. Who was present when you had the conversation with Nathan Fleisher?

A. Those men I just mentioned.

Q. Nathan Fleisher, Abe Finklestein and Arnold Steinert, and no one else was present?

A. The steward came up later but he wasn't there first. [35]

\* \* \* \* \*

Q. (By Mr. O'Brien): I want you to tell us what the conversation was before the steward came up.

A. I asked Nathan Fleisher why he had stopped the men from hanging the doors. He says he had orders from the District Council that morning to stop them from hanging the doors until they could establish the fact whether they were union or non-union made doors. He says I could have pulled them off yesterday but I waited until today. And I told him at the time that, well, I says that I always thought I should have notice before anybody could be pulled off, and he says, well, those are my orders, so he says we will have to stop hanging the doors until they get cleared by the union.

Q. And then you say the steward came up?

A. Saul Agronovich. And also Sam Agronovich, which was the man that was hanging the doors at the time.



(Testimony of James Layton Nicholson.)

Q. Now Sam—were both carpenters employed by you? A. That is right.

Q. And what conversation took place after they came up? A. Well, Sam— [36]

Mr. Garrett: Just a moment. Objected to as calling for a conclusion, objected to as leading, on the further grounds that no proper foundation has been laid, objected to as being hearsay as to these respondents and to the respondent council.

Trial Examiner: I will overrule the objection. You may answer.

The Witness: When Sam and Saul came up I told them in front of all of them that they might as well pick up their tools, if we can't hang the doors they might as well pick up their tools, that we are practically caught up and they all started picking up their tools. And then I got to thinking it over and decided there was no use in doing that as we needed to put up the butts and jambs and so the painters could match them with the paint. So I told the foreman, Arnold Steinert, to relocate the men and in such a way they could keep on working. [37]

\* \* \* \* \*

Mr. O'Brien: The witness has described a conversation between himself and Mr. Fleisher and what I am trying to find out is at what point the steward, Saul Agronovich, entered the presence of the two of you.

The Witness: Well, it was when he and Sam came up the stairs there and we were discussing the stopping of the hanging of the doors and I told them

(Testimony of James Layton Nicholson.)

that if we can't hang the doors we might as well lay the men off. He was there at the time when I told them we might as well lay the men off.

Q. (By Mr. O'Brien): Have you made any further efforts to get the doors hung?

A. Yes.

\* \* \* \* \*

Q. (By Mr. O'Brien): My next question is, approximately when? [38]

A. I don't remember the exact date.

Q. Was it within a day or two of the incident you have described?

A. About a week later.

Mr. Nicoson: Just a minute. You sure have to be pretty fast to get in an objection. I object to it on the ground it was leading.

The Witness: I am sorry, I am kind of hard of hearing.

Trial Examiner: I will overrule the objection. Now the answer was to the question substantially when did you make a further attempt?

The Witness: Approximately a week later, I would say.

Q. (By Mr. O'Brien): What did you do?

A. Well, I took my foreman and I went with him and asked the men if they would hang the doors and why—

\* \* \* \* \*

Q. (By Mr. O'Brien): In that connection, did you have any conversation with the union steward?

(Testimony of James Layton Nicholson.)

A. Yes. He was the first one I asked that or the first one I had my foreman ask. [39]

Q. Your foreman was present and Saul Agronovich was present, and was anyone else present?

A. Yes.

Q. Who?

A. Lou Feldman, he was working with Saul at the time.

Q. And is he a carpenter?      A. Yes.

Q. And what was your conversation with Saul Agronovich, or what conversation did you overhear?

A. You want me to explain the whole conversation?

Trial Examiner: Just tell us what you heard.

The Witness: Well, Steinert, the foreman, asked Saul, he says will you hang these doors. And he says not unless we get clearance from the union.

Q. (By Mr. O'Brien): Was that all he said?

A. Yes, he said not unless we get clearance from the union.

Q. Did you overhear, did Mr. Steinert say anything to Mr. Feldman?

A. Yes, he asked him the same question. Mr. Feldman said he would be glad to hang the doors if they got clearance from the union.

Q. And then what did you do?

A. Then we went to Charlie Franklin next.

Q. And by "we" you mean—

A. Arnold Steinert and myself, that is right. [40]

Q. And who is Charlie Franklin?

(Testimony of James Layton Nicholson.)

A. He is one of my main carpenters, a cabinet man.

Q. And what was the conversation there?

A. We asked him the same question and he said not unless they get clearance from the union.

Q. And next?

A. Next we went to a man by the name of Shand. He said I don't intend to get my neck in a sling, those were the words he used.

Q. Anyone else?

A. Then we went up on the fourth floor to Harold Lokna.

Q. Who?

A. Harold Lokna. He said he couldn't afford to—

Mr. Nicolson: Just a moment. He said they went up.

The Witness: We went up, in other words, Steinert and myself.

Mr. Nicolson: All right.

The Witness: To Harold Lokna.

Q. (By Mr. O'Brien): And is he a carpenter?

A. Yes, and he said he couldn't afford to.

Q. Anything else?

A. That was all, that is all the carpenters I had on the job at that time.

Q. Have you had any other conversations with the steward about these doors? [41]

A. Yes, we talk about them every day.

\* \* \* \* \*

(Testimony of James Layton Nicholson.)

Q. (By Mr. O'Brien): Do you recall your most recent conversation about the doors?

A. This morning.

\* \* \* \* \*

Q. (By Mr. O'Brien): This morning where was the conversation?

A. I couldn't just say where; but if I remember right it was on the second floor but I just couldn't say for sure.

Q. Was anyone else present?

A. Yes, Lou Feldman was with him again.

Q. Who?      A. Lou Feldman.

Q. And what did you say and what did Mr. Agronovich say?

A. Well, he said: "I see you are all dressed up again." I said: "Yes, I am going back to court." And he said, I will sure be glad when this is all settled, and I said, so will I. [42]

Q. Do you recall any other conversation about the doors with Mr. Agronovich?      A. No.

Q. Have you made any other efforts to get these doors hung?      A. Yes.

Q. Approximately when?

A. Let's see, I believe it was Monday of this week.

Trial Examiner: Monday of this week?

The Witness: I mean, no, not this week. It was Monday; it was one day last week. I couldn't say or tell you just what day it was.

Q. (By Mr. O'Brien): What effort did you make?



(Testimony of James Layton Nicholson.)

A. A fellow by the name of Jacobson, a former carpenter of mine, asked me if he could get back on the job again. He is one of my old time men. And I said, yes, if you will hang the doors I will put you on right now.

Q. And what did he say?

A. He said: "I've been told about the doors," and he smiled and said, thank you just the same.

\* \* \* \* \*

### Cross Examination

Q. (By Mr. Nicoson): How long have you occupied the position of general superintendent, Mr. Nicholson? [43]

A. I have been with Havstad since 1931.

Q. 1931. And since 1931 have you occupied the position of general superintendent with Havstad and Jensen?

A. No, this is the first joint venture they have had.

Q. What do you mean, this is the first joint venture they have had?

A. This hospital job under Havstad and Jensen is a joint venture.

Q. With whom?

A. With Havstad and Jensen.

Q. Does Havstad have a joint venture with Havstad and Jensen?

A. I don't, well, I don't know how you state it. In other words, Havstad and Jensen is working on this job as a joint venture. I think that is as clear a way as I can state it.

(Testimony of James Layton Nicholson.)

Q. And you mean that there is just Havstad and Jensen in this venture? A. That is right.

Q. Just the two of them? A. That is right.

Q. And how long have you been in the construction business, Mr. Nicholson? A. All of my life.

Q. Have you heard the term joint venture used before? A. Yes.

Q. Have you ever—— [44]

A. Joint venture or joint venturers some of them call it.

Q. Have you ever had any experience with a joint venture before?

A. No, this is my first time.

Q. Have you ever worked where the construction job was a joint venture that you know of?

A. Not until this time, no.

Q. This time? A. Yes, that is right.

Q. Where did you receive your information that this was a joint venture?

A. From the contractor's license that is right on it.

Q. From the contractor's license, whose name is on it?

A. Havstad and Jensen joint venture it says.

Q. And no other names on that? A. No.

Q. Do you know what arrangement, if any, the Havstad and Jensen people have with the White Memorial Hospital?

A. Yes. Havstad and Jensen work as agents for the College of Medical Evangelists.

(Testimony of James Layton Nicholson.)

Q. And what is the College of Medical Evangelists?

A. The College of Medical Evangelists is a medical school and nurses training school owned and operated by the Seventh Day Adventists of which they are members, and so am I.

Q. Now the College of Medical Evangelists, do they own the [45] White Memorial Hospital, or do you know?

A. The College of Medical Evangelists owns and operates the White Memorial Hospital for the denomination of the Seventh Day Adventists as near as I can state it.

Q. Now, you stated that Havstad and Jensen were the agents of the College of Medical Evangelists, is that correct?

A. That is correct, they work as agents for the College of Medical Evangelists. In other words, they represent the church on the job.

Q. From what source did you obtain that information, if you did?

A. It is in all of our agreements and in all of our letterheads and on all our purchase orders, all the way down the line it says College of Medical Evangelists, agents for College of Medical Evangelists.

Q. Well, now, I am not sure that you properly stated yourself. You said that the College of Medical Evangelists are agents for the College—

A. No, Havstad and Jensen. In other words, in all of our contracts with the architects and the owners and everything, all of our purchase orders and

(Testimony of James Layton Nicholson.)

all of our letterheads, everything is written right on it, it is written Havstad and Jensen, agents for the College of Medical Evangelists. [46]

\* \* \* \* \*

Q. And when an order is placed for material, is it placed by Havstad and Jensen as agents of the College of Medical Evangelists?

A. The purchase order reads Havstad and Jensen, agents for College of Medical Evangelists.

Q. And I take it that in this two year period you have paid some bills or that some bills have been paid on this construction have been paid by you?

A. I okay all of the bills.

Q. You okay all of the bills. And do you sign the checks?

A. I do some of them. In other words, Havstad and Jensen and myself sign the checks on the payroll only. The balance of the bills are paid by the College of Medical Evangelists.

Q. Now the payroll checks are issued by the College of Medical Evangelists; is that correct?

A. It says right on the check Havstad and Jensen, agents for College of Medical Evangelists.

Q. And is there a special account to which that check is directed?

A. Yes. In other words, we have an account set up by the College of Medical Evangelists for the payroll. That is put [47] in the bank and is reimbursed each week after the payroll is made.

Q. Insofar as you know, do Havstad and Jensen

(Testimony of James Layton Nicholson.)

have any of their money deposited in that account?

A. No.

Q. Is there a contract between—strike that. Is there any paper that you have seen which you understand to set out the relationship between Havstad and Jensen and the College of Medical Evangelists?

A. Yes.

Q. Are you familiar with the contents of that document?

A. Yes.

Q. And do the contents of that document generally reflect the information which you have just given as to their relationship?

A. That is right.

Q. Now, is your personal check, I mean the check for your services, is that also written on this same account?

A. The same payroll account, that is right.

Q. The College of Medical Evangelists with Havstad and Jensen as agents?

A. Havstad and Jensen, agents for the College of Medical Evangelists, that is right.

Q. Have you had occasion while working on this project to place orders for materials with suppliers?

A. Yes, I place orders right along.

Q. And do you place that order in the name of Havstad and Jensen?

A. On the regular purchase order forms.

Q. In the name of Havstad and Jensen as agents for the College of Medical Evangelists?

A. That is right.

Q. Do you know of any material which has gone



(Testimony of James Layton Nicholson.)

into the project out there that has not been obtained by that same means? A. No.

Q. All of it?

A. That is right. Let me take that back. In other words, there are certain items of equipment—I would like to make this clear—there is certain items of equipment that is purchased by the hospital itself and we install it, but it is not material in the construction of the job. In other words, certain items of equipment that is purchased by the hospital itself. I wanted to make that clear.

Q. That would be in the nature of hospital equipment, would it?

A. Yes, but we install it, have to see that it is installed. It is in the subcontractor's contract to install it, but it is purchased by the hospital itself, but we install it, and it is written in the contract that we install it, but it is purchased by the hospital. [49]

Q. And what you are now talking about—and you can correct me if my assumption is wrong—what you are talking about is the equipment, for example, that goes into the operating room, X-ray machine—

A. And sterilizers.

Q. Yes, sterilizers or laundry equipment?

A. That is right. In other words, it comes under a separate item as equipment underneath the schedule as the budget is set up.

Q. You have nothing to do with the purchase of that, all you have to do is to take care of the installation?

A. Installing and coordinating it and see that it

(Testimony of James Layton Nicholson.)

all gets roughed in the building and operating when the building is completed, that is right.

Q. Do you know a Mr. Sam Agronovich?

A. Yes.

Q. Has he ever been employed on the project out there on New Jersey? A. Yes.

Q. And he is a carpenter, is he not?

A. That is right.

Q. And in what capacity?

A. I hired him to hang doors but when I asked— may I go ahead?

Q. Go right ahead. [50]

A. When I asked for him to come out I told him I would use him for building cabinets and such things as that until the doors arrived and we needed him for that work.

Q. But your main purpose in asking for him was to hang the doors?

A. That was what I asked for him for to hang the doors, I asked for a good door hanger and the doors had not arrived and so I asked for him with the idea that he could do some cabinet work until they did arrive.

Q. In other words, you were to fill him in on other work until they arrived but his job was to hang doors?

A. His job was to hang doors, that is right.

Q. Now, did you at any time employ any other men especially for the purpose of hanging doors?

A. Yes.

Q. And who were they?

(Testimony of James Layton Nicholson.)

A. Well, there is a fellow by the name of Allen, a colored carpenter, which Nathan Fleisher sent to me after the doors had been on the job and he said that he felt that they were going to be cleared, and I also hired him with the idea that he could do some work on cabinets or anything that was there until the doors were cleared and we could hang them.

Q. Did you ever assign Allen to hang the doors?

A. He hung the first doors that had been hung, that is the metal doors and fire doors. [51]

Q. So he has been assigned to hang the metal doors?

A. The metal, well they are a Truscon door and all you do is put the pin in.

Q. And he didn't have—

A. There is no fitting on those, you see.

Q. When did Mr. Allen come on the job?

A. I couldn't remember the date he came on the job but he worked for me for some time until I got caught up.

Q. Could you tell us approximately how long he was on the job out there?

A. Well, let me think now. It was approximately a week after the 17th, as I recall, that Nathan Fleisher sent him out to the job and he worked for me until about two weeks or a week and a half ago, I don't remember exactly what time he finished hanging the fire doors I had there, and at that time I let him go because I had no more for him to do. That is as near as I can recall it.

Q. Now you say that he was employed approxi-

(Testimony of James Layton Nicholson.)

mately a week after August the 17th; is that correct?

A. It is somewhere approximately a week after, yes, because it was in the following week when Nathan Fleisher said that he thought that the doors were going to be cleared and for me to call Thomas, and at that time I told him, well, if there is any chance that we might get them cleared, you might send me a good carpenter and I will work him in on cabinets or [52] whatever I got until we can hang the doors and you can send him on so I have a good man there. [53]

\* \* \* \* \*

Q. (By Mr. Nicolson): On the morning of the 17th, I believe it was then that you stated that you came on the job out there around about 11 o'clock; is that correct? A. That is right.

Q. And you had this conversation with Mrs. Kaiser; is that right? A. That is right.

Q. After you had the conversation with Mrs. Kaiser which you have testified to, did you then go out to see Mr. Steinert?

A. I went out first to the lobby, yes, and then down to where they were on the ground floor.

Q. Mr. Steinert was the foreman on the job, was he?

A. He is the foreman on the job.

Q. And he is in charge when you are not there; is that correct?

A. He is in charge. In other words, I give all of

(Testimony of James Layton Nicholson.)

my orders to Mr. Steinert, and he transfers my wishes to the men.

Q. And so you went out there to see Mr. Steinert to find out what was going on?

A. I went out to see Mr. Fleisher.

Q. You went looking for Mr. Steinert?

A. No, I was looking for Mr. Fleisher.

Q. But you did see Mr. Steinert? A. Yes.

Q. You saw Mr. Steinert? [54]

A. I went directly to Mr. Fleisher.

Q. And did you see Mr. Steinert before you went directly to Mr. Fleisher? A. No.

Q. Where was Mr. Fleisher at the time that you saw him?

A. He was on the ground floor.

Q. Whereabouts on the ground floor?

A. Right at the foot of the stairs.

Q. And where are the stairs?

A. Well, coming into the lobby, you have two elevators, just to the right-hand side of the elevators there is the stairs leading down, down to a landing and down to the ground floor, and it was directly at the foot of the stairs, that is where.

Q. And this stairway that you are talking about, is it close to the entrance, the lobby entrance?

A. That is right, one floor directly, right below the lobby by the entrance, that is right.

Q. Then physically, the lobby entrance comes in on the second floor?

A. No, we have a basement and then the ground



(Testimony of James Layton Nicholson.)

floor and then the floors are numbered, they start two, three, four and five.

Q. I see, and there is a floor above the ground floor? A. That is right.

Q. And you have to go through the lobby down the stairs? A. That is right. [55]

Q. And you went to the ground floor and there you saw Mr. Fleisher? A. That is right.

Q. Was he standing at the foot of the stairs?

A. They were there talking, yes.

Q. Who was talking?

A. Abe Finklestein, Arthur Steinert and Nathan Fleisher, and Levine was there when I came down, and then he walked off.

Q. And did you hear anything that these three men said at the foot of the stairs?

A. When I first came down there, I asked the questions myself.

Q. Pardon me, let's establish a little contact here.

A. Okay.

Q. Before you started your questions, did you hear anything that any of these men said?

A. No, no, I asked the first question myself.

Q. And when you got down there, what was the first question that you asked?

A. I asked why he had pulled the men off the job.

Q. Asked who? A. Fleisher.

Q. Is that about what your words were, why did you pull the men off the job?

A. That is right.

Q. And Mr. Steinert was there at the time? [56]

(Testimony of James Layton Nicholson.)

A. Yes.

Q. And Mr. Finkelstein? A. That is right.

Q. And then Mr. Finkelstein left?

A. No, Levine left.

Q. Levine left before you got down there?

A. As I came down the stairs, yes.

Q. Before you arrived at the spot of the conversation, Levine was gone?

A. As I was coming down the stairs, yes, as I was coming down, he walked away.

Q. So when you got there where you started the conversation; Levine had left? A. That is right.

Q. And upon your arrival, Mr. Finkelstein left immediately too? A. No:

Q. Are you sure about that?

A. I am sure Finkelstein stayed there.

Q. So you then asked Mr. Fleisher, you asked why he had done what?

A. Why he had pulled the men off the job.

Q. I see, and did he make any reply to that?

A. Yes.

Q. What did he say? [57]

A. He said that he had word from the District Council that morning to stop them from hanging the doors until they could be established if they were union or non-union.

Q. What else did he say?

A. He said that he orders to pull the men off the job.

Q. And that is when you lost your temper?

(Testimony of James Layton Nicholson.)

A. That is when I lost my temper I am sorry to say, but I did.

Q. And you started issuing orders?

A. That is when I said that the men might as well pick up their tools.

Q. And upon a calmer reflection, you retracted those orders?

A. Yes, I told Mr. Steinert to relocate the men so they could keep on going.

Q. Well, now, as a matter of fact, Mr. Finkelstein did the same type of work after your conversation for the remainder of the day that he had been doing prior? ~ A. That is right.

Q. And the same is true with regard to Mr. Levine?

A. Mr. Levine did the same, they were building the cabinets.

Q. So, as far as you were concerned, you countermanded your bit of temper, and they still kept on doing the same thing that they had been doing previously? A. That is correct.

Q. And I believe it is also your testimony—strike that, [58] please. I believe also you did not ask either Mr. Finkelstein or Mr. Levine to hang any doors that day? A. No, I did not.

Q. I believe also you did not ask anybody else to hang any doors that day; isn't that correct?

A. We were just getting started setting up. Pardon me, no, I did not. You see, I am not used to this, Your Honor, and it is hard for me to keep from explaining myself.

(Testimony of James Layton Nicholson.)

Q. Now, this laborer that you mentioned, I believe you recalled his name as being Brown?

A. Yes, we call him Preacher Brown.

Q. And there were two of them?

A. Three of them, Steinert had already started having them place the doors on the different floors.

Q. And where were they?

A. They were in the lobby as I came in the door, and they was there in the lobby, and one of them had a broom. In other words—

Q. Just tell us what he was doing.

A. Oh, he was just standing there brushing the broom back and forth, and I says how come you are not working, and, well, he said the union stopped us.

Q. And is that all he said?

A. That is all he said, and I said I would get them lined up as soon as I could find Steinert, and then I went on to [59] find Steinert and see what had, see what he had in mind.

Q. I take it that your conversation with the three laborers was very brief?

A. That is correct, then I went on down below.

Q. And you just spoke to them in passing, you hardly hesitated, did you?

A. That is right, but we had to refine them on new work.

Q. And you were building up a little steam about that time, were you not?

A. Yes, I was, I am sorry to say.

Q. Now, about a week—strike that. Now, about, I guess about a couple of weeks ago, after you testi-

(Testimony of James Layton Nicholson.)

fied in the proceedings before Judge Westover—do you recall when you so testified? A. Yes.

Q. You then, after your testimony, and after hearing the evidence in that case, went out and asked some other people to hang doors, didn't you?

A. That is right.

Q. Now, who was the first person after hearing that testimony—by the way—strike that. Who was the first person you talked to about hanging doors after you heard the testimony up there before Judge Westover?

A. After we were told not to hang doors until they was cleared, I never asked anybody until the morning I took my [60] foreman—

Q. I am sorry, maybe I did not phrase the question properly. After testifying before Judge Westover and hearing the evidence up there—by the way, I believe that was on October 4?

Mr. O'Brien: Monday, October 4.

Q. (By Mr. Nicolson): Do you remember that to be the date? A. Yes.

Q. After that, now, who is the first person that you talked to about hanging the doors after you got off of the witness stand?

A. I just don't quite get what you mean by the first person I talked to.

Q. Did you talk with anybody about hanging the doors before you went out to talk to the men?

A. Yes, but not that particular day. Naturally, I talked it over with Havstad and Jensen and Stein-



(Testimony of James Layton Nicholson.)

ert, and I talked about it, well, Steinert and I talked about it on the way home.

Q. Who else did you talk to *to* before you went out and asked the men?

A. On that particular day I didn't ask the men.

Q. On any other day before you talked to the men?

A. Mr. Sand called me and brought up the question—is it all right for me to carry on?

Q. Go ahead. [61]

A. He called up and brought up the question that they had talked about in court that I hadn't asked any other men. And he wanted to know if I would ask them. I told him I can't ask myself, I will have to have my foreman go with me and let him ask if they would hang the doors.

Q. And who is Mr. Sand?

A. Mr. Sand of the Sand Door and Plywood Company.

Q. Are you acquainted with Mr. Sand?

A. No, I am not.

Trial Examiner: Will you find a good place to break and we will take the noon recess.

Q. (By Mr. Nicolson): Was this conversation over the telephone? A. Yes.

Q. Had you ever talked with Mr. Sand over the telephone before? A. Not myself, no.

Q. Have you since? A. No.

Q. Did he call you or did you call Mr. Sand?

A. He called me.

Q. And when did he call you?

(Testimony of James Layton Nicholson.)

A. It was in the morning, I don't know just what time.

Q. The next day after you had testified?

A. No, I don't recall just what day it was. [62]

Q. But it was either that next day or the next one after that?

A. Right in there, I don't remember, the next or the next one after that, but it was right in there—no, I remember it was on a Tuesday, and as I recall, it was Tuesday, so that would have to be the next day.

Q. That is right.

A. Because I recall now, it was on a Tuesday.

Q. And what did Mr. Sand say to you?

A. He just said that in court it was brought up the question that I hadn't asked more men to hang the doors and they wanted to know if I would ask more men.

Q. Mr. Sand asked you that?

A. Yes, and I agreed with him, and I told him I hadn't asked more men to hang the doors because I am a union man myself, so I said yes, I will ask my foreman to go with me. I didn't tell him he had to, but I asked him to go with me and ask the men if they would hang the doors and why, and that is what I did. [63]

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Q. (By Mr. Nicolson): Mr. Nicholson, after you had this conversation with Mr. Sand, did you thereafter have a conversation with Mr. Steinert?

A. Yes.

(Testimony of James Layton Nicholson.)

Q. And that is your foreman?

A. Yes. [65]

Q. Your carpenter foreman?

A. That is right.

Q. And where did that conversation take place?

A. Over in front of the church project which is right across from the main hospital project.

Q. You mean across the street?

A. Yes, sir.

Q. Mr. Steinert was over there directing some work over there?

A. That is correct.

Q. Now, when you talked with Mr. Steinert the first time after you received the call from Mr. Sand, can you give us about the date that occurred on, would that be on the Tuesday, October 5th, approximately?

A. It would be awfully hard to give the date, I just don't remember.

Q. Well, assuming, I think it is a fact that we were all in Federal Court on October 4th, being a Monday.

A. Yes, I believe it would be the following day.

Q. The following day, which would be October 5th?

A. That would be right, to the best of my recollection.

Q. When you talked with Mr. Steinert, was there anyone there except the two of you when you first talked with him?

A. When I first talked there was just the two of us.

(Testimony of James Layton Nicholson.)

Q. Now, what did you say to him and what did he say to you? [66]

A. I asked him if he would go with me over to the main hospital building and ask the carpenters if they would hang the doors.

Q. And did you tell him about your conversation with Mr. Sand?

A. I did in the process of the conversation, but I don't remember if I did right at that time.

Q. Well, is it fair to state that after you and he began this conversation across the street, that you both went over to the hospital project together?

A. We both walked across the street together, yes.

Q. Over to the hospital?

A. That is right.

Q. And on the way over to the hospital, I take it that you had more conversation?

A. That is right.

Q. And will you tell us as best you can recall from the very beginning, from the time that you first went to Mr. Steinert at that time, all you said to him and all he said to you, just up to the time you arrived at the hospital steps?

A. Well, I asked him if he would go with me and ask the men if they would hang the doors. I told him that I did not want him to say or do anything that would be a violation of the working rules, because, after all, that would make me be giving orders to have them doing something in violation of the [67] rules, and if he did it, he would be going

(Testimony of James Linton Nicholson.)

against the working rules. But I felt that in all fairness to Havstad and Jensen and to the College of Medical Evangelists, which I represent, that I wasn't going against any rules by asking the men if they wanted to, that I felt I could ask that, and when they said no, I would ask why. And that is the basis of it, and he agreed to do it, and we went over, as I have stated before, we went over and asked the men.

Mr. O'Brien: If I may interrupt for a moment. I would like to know of this witness whether he is repeating what he said to Mr. Steinert, or is he now stating something that was in his mind as an inducement to what he said to Mr. Steinert.

The Witness: I don't quite get that.

Mr. O'Brien: Well, what you have just told us, is that what you said to Mr. Steinert and what he said to you?

The Witness: Yes.

Q. (By Mr. Nicolson): Those are the words used between the two of you at the time that you met him and walked over to the hospital project?

A. That is right.

Q. Now, at that time, did you tell Mr. Steinert that you had had this call from Mr. Sand?

A. I told him, yes.

Q. And did you tell Mr. Steinert that Mr. Sand suggested that you go out and ask these people if they would hang the [68] doors?

A. That is right.

Q. What did you say about that, what did you



(Testimony of James Layton Nicholson.)

tell Mr. Steinert about your telephone conversation with Mr. Sand?

A. I told him that I would like to know myself what the reaction of the men would be.

Q. Well, is that what Mr. Sand told you to find out, to find out what the reaction would be?

A. He asked me to find out whether the men would hang the doors.

Q. Mr. Sand told you this, or did he tell you that?

A. That is what I collected from his request, was for me to go out and ask the men if they would hang the doors.

Q. My question is whether or not you told Mr. Steinert that Mr. Sand had suggested that you go out and find out whether the men would hang the doors or not.

A. To the best of my recollection, I told Mr. Steinert of the conversation with Sand, yes.

Q. Well, do you recall telling Mr. Steinert that Mr. Sand had said to go out and ask the men if they would hang the doors?

A. I don't remember how I stated it, other than I told him that Mr. Sand had called me and asked me if we would ask the men to hang the doors. I hesitated at first, and then I told him, yes, I would ask the foreman if he would ask them as [69] superintendent on the job, because it would be out of my jurisdiction, and I wanted the foreman to ask so it would be authentic.

Q. And that is what you told Mr. Steinert that

(Testimony of James Layton Nicholson.)

Mr. Sand had said to you over the telephone; is that correct?

A. That is correct. I wanted to know on my own, and I told him that I wanted to know if the men would hang the doors and get their reaction to it.

Q. By the way, you said that you were a union man yourself? A. That is right.

Q. And what organization do you belong to?

A. The carpenters.

Q. What local? A. 1913, Van Nuys.

Q. Now, after you and Mr. Sand got to the hospital door, I assume that you went on inside?

A. You mean Mr. Steinert?

Q. Mr. Steinert, thank you.

A. That is right.

Q. Did you have a conversation with some carpenters then?

A. We went right to Saul Agronovich, which is the steward.

Q. Was he at work? A. Yes.

Q. In the basement?

A. On the ground floor. [70]

Q. And is that sometimes referred to as the basement?

A. No, you see the job is on a hillside, and the lobby comes off of New Jersey on the first floor level, but you have two floors which is the ground level and the basement. It might be referred to as actually as two basements.

Q. And you say that Saul Agronovich was working on the ground floor?

(Testimony of James Layton Nicholson.)

A. That is right.

Q. What was he doing?

A. Making bases for the lockers.

Q. Bases for the lockers?

A. That is right.

Q. And is that carpenter work?

A. That is right, they are made out of plywood.

Q. And is that sometimes referred to as finished carpentry work as distinguished from rough carpentry work?

A. That is right.

Q. All right, now, who spoke to Saul Agronovich first, if you recall?

A. I believe Mr. Steinert did. In fact, I am pretty nearly sure, but I wouldn't say for sure on that.

Q. What did Mr. Steinert say to Mr. Saul Agronovich?

A. He told him, well, he asked him the question, he said, would you be willing to hang the doors.

Q. And did Mr. Agronovich say, what did he say? [71]

A. Agronovich said he would be glad to hang the doors if we could get clearance on them. It was just a matter of getting clearance.

Q. And after you talked to Saul Agronovich, you went to who?

A. To Lou Feldman. You see, we pair the carpenters off in pairs, and it is more or less a policy to keep them in pairs throughout the job and keep them with the same partners.

Q. And was this Lou Feldman there at the time?

(Testimony of James Layton Nicholson.)

A. That is right.

Q. And did you ask him the same question?

A. Asked him the same question.

Q. And what did you say to him?

A. Asked if he would be willing to hang the doors.

Q. And what did this Lou Feldman say?

A. His reaction was the same, he would hang the doors if they got clearance.

Q. Now, then, you went to somebody else, did you?

A. Then I went to Charlie Franklin, or we did.

Q. You mean with Mr. Steinert?

A. That is right.

Q. And where was he?

A. He was on the same floor, and he was building a cabinet.

Q. And was he working near Mr. Agronovich and Mr. Feldman?

A. About as far as from here to the door over there from where they were, yes. [72]

Q. And Mr. Feldman and Mr. Agronovich were working together, were they?

A. Working right together, they are partners.

Q. And you say it is about as far, or it was about as far as from here to the door, which is about fifteen feet, would you say?

A. About twenty feet away.

Q. And then you talked with this other gentleman?

A. That is right.

Q. And what did you ask him?

(Testimony of James Layton Nicholson.)

A. I asked him, or Arnold Steinert asked in my presence, if he would be willing to hang the doors.

Q. Did Saul Agronovich go with you over to ask the third gentleman? A. No.

Q. Did Mr. Feldman? A. No.

Q. Did Mr. Agronovich and Mr. Feldman continue to work after they had answered your question? A. Yes, they did.

Q. And are they still on the job?

A. They are still working, that is right.

Q. Now, this third man that you asked, did you ask him if he would hang the doors?

A. Asked if he would be willing to hang the doors, yes. [73]

Q. If he would be willing to?

A. That is right.

Q. And what did he say?

A. He said he would have to have clearance.

Q. Have to have clearance?

A. That is right.

Q. All right, and then did you go to see another person?

A. Mr. Shand, that is right.

Q. And where was Mr. Shand?

A. Mr. Shand was out in the hall. Oh, I would say he was about twenty-five feet from the stair leading up to the next floor.

Q. In other words, he was approximately there in the same room?

A. In—not in the room, but out in the hall beyond the room.



(Testimony of James Layton Nicholson.)

Q. In the hall? A. Yes.

Q. And was he by himself?

A. He was by himself.

Q. And you say that you and Mr. Steinert went to talk to him?

A. That is right.

Q. And did Mr. Steinert ask the same question again?

A. That is right. And he hesitated, and then he said I can't afford to get my neck in a sling. [74]

Q. What did Mr. Steinert ask him?

A. He asked if he would be willing to hang the doors.

Q. And then Mr. Shand replied what?

A. He said I can't afford to get my neck in a sling.

Q. And then from Mr. Shand you went to a Mr. Lokna; is that correct?

A. Lokna, Harold Lokna.

Q. Where was he?

A. He was on the fourth floor.

Q. And just you and Mr. Steinert went to him?

A. That is right.

Q. Mr. Steinert asked him the question?

A. That is right, if he would be willing to hang the doors.

Q. And what was his reply?

A. He said I can't afford to.

Q. I can't afford to?

A. That is right.

Q. Now, after you talked with Mr. Shand, did

(Testimony of James Layton Nicholson.)

he continue on doing the work he had been doing?

A. That is right.

Q. And is he still doing it?

A. He is the one that had a heart attack and is in the hospital for the time being.

Q. Until he had his heart attack, he continued with the work, continued to perform his assigned work? [75]

A. Right.

Q. And Mr. Lokna, after he had this conversation with you, did he continue on doing his work?

A. He is continuing, he and Charlie Franklin are working as a pair and they are still working on the cabinets.

Q. And you talked with Mr. Franklin?

A. Mr. Franklin was the third man we talked to.

Q. The third man? A. Yes.

Q. And he was the fellow that was about twenty feet away?

A. About as far as to the door, yes.

Q. And your estimate of that would be about twenty feet?

A. Somewhere in there, twenty or twenty-five feet, yes.

Q. Now, are those the only persons that you asked if they would be willing to hang the doors?

A. At that particular time, yes, that is right, they were the only carpenters that we had on that particular job at that time, you see, the job is right

(Testimony of James Layton Nicholson.)

at the completion point, and they were the only carpenters that we had there at that time.

Q. Now, did you ask Mr. Fleisher about that time to furnish you with men to hang the doors?

A. It was before that time.

Q. Now, I am asking about this time.

A. No, not at that time.

Q. And have you since? [76]

A. Since that time we have asked Mr. Fleisher, yes.

Q. You have since that time asked Mr. Fleisher to furnish you men to hang the doors; is that right?

A. Yes, yes, that is right. I didn't myself, but the contractor did.

Q. And who is the contractor?

A. Jensen.

Q. Were you there when Mr. Jensen made the request? A. Yes.

Q. Was Mr. Fleisher there in person?

A. Yes, in our office at the time.

Q. In your office, and there were just the three of you?

A. No, the new fellow that took over Mrs. Sweitz' job there in the office, and I can't think of his last name, but he was there.

Q. Anyhow, he was the office employee that was there? A. That is right.

Q. He was there acting as sort of a secretary to Mr. Jensen and Havstad and to you?

A. That is right, in other words, he is the man that took over the office now.

(Testimony of James Layton Nicholson.)

Q. All right, what did Mr. Jensen ask Mr. Fleisher?

A. He asked if he would be able to get men to hang the doors, that it was getting to the critical point, that we had to get the doors hung, and he answered he couldn't do a thing until [77] things cleared up in court or anyway, things were cleared up.

Q. Mr. Fleisher said that?

A. That is right, he said I can't commit myself in any way until things are cleared up; and we never asked him to say any more, that is all he can do.

Q. And you say that this conversation that you have told us about took place in the office?

A. That is right, in fact, Mr. Jensen called Mr. Fleisher on the telephone and asked him to come out, that we wanted to talk to him.

Q. Now, while you were having this conversation with Mr. Fleisher in the office, were there any carpenters in there?

A. Not that I know of, no.

Q. And was it your usual practice when you need men as carpenters, do to that?

A. If I need men, I call into the hall and get them sent up through the hall. If we have men, say, in another locality, then we get clearance for them to clear into the hospital job.

Q. In other words, you send in a written request?

A. Written or by telephone.

Q. Or by phone?

(Testimony of James Layton Nicholson.)

A. That is right, most of the time it is by phone, and sometimes on the transfers, then I send in a written order to transfer them from one job to another.

Q. When you telephone into the office for men, do you always [78] talk to Mr. Fleisher?

A. I ask Mr. Fleisher personally, yes.

Q. I am asking you if you always talk to Mr. Fleisher?      A. Yes, I always do.

Q. In other words, if Mr. Fleisher isn't there, you do not place your order for men?

A. No, I don't.

Q. And so you have the telephone answering service, you tell them to have him call you?

A. I always call back; I don't ask them to call me, I call back.

Q. Now, have you filed with this union any written requests to transfer men over there for the purpose of hanging these doors?

A. No, I have not.

Q. Have you made any oral request for any specific men to hang the doors?

A. I just asked him for door carpenters. in other words, first-class door men.

Q. But you haven't asked for any named person to be assigned as the door hanger.

A. No, because we feel that he has the judgment of the men in the hall and knows which is the best door men.

Q. But the point is that you have not asked for any named person? [79]



(Testimony of James Layton Nicholson.)

A. No, not for any named person, just for door men.

Q. Is it fair to state that the only conversation that you have had with Mr. Fleisher with respect to the furnishing of men for hanging the doors was the one that you have just related, which took place between Mr. Jensen and Mr. Fleisher, at which you were present and also the new office manager or secretary?

A: That and the time he stopped the men are the only two that I brought up the question of the doors, other than to say that I would be glad to get it settled because it was getting urgent. In fact, I have mentioned that to him several times, but I never stepped out of line to ask him to do it.

Q. Well, now, you said a moment ago that you represented the College of Medical Evangelists?

A. That is right.

Q. Just what do you mean by that?

A. Well, the College of Medical Evangelists is owned by the Seventh Day Adventists which I am a member of, and I have worked on their institutions practically all of my life as an agent or representative. In other words, I have the interest of the job at heart, being a member, and with the Havstad and Jensen firm because we have done their hospital construction over a period of years.

Q. Do you have any employment relationship with the College of Medical Evangelists? [80]

A. No, I do not. My employment is strictly by Havstad and Jensen myself.

(Testimony of James Layton Nicholson.)

Q. Do you draw any money from the College of Medical Evangelists except through the check method which you have mentioned?

A. I am paid a yearly salary and I also get a bonus check, yes.

Q. Do you have any money invested in the College of Medical Evangelists?

A. Other than by tithes and offerings which I always give to the church as a church member.

Q. Do you know whether or not the College of Medical Evangelists is a corporation?

A. That I couldn't tell you, I couldn't tell you about that exactly. You see, it is owned by the General Conference of Seventh Day Adventists.

Q. Do you know whether the White Memorial Hospital is a corporation?

A. That I couldn't tell you either, although I know it is owned by the College of Medical Evangelists. You see, it is a foundation, and I know it comes under some kind of a foundation which is set down, but I don't know just how it is, I just couldn't say.

Q. I believe in your direct testimony you said in passing that Sam Agronovich was the one that had been assigned to hang the doors? [81]

A. That is right.

Q. And when you came there that morning around 11 o'clock, you found that he had stopped hanging doors?

A. Yes, at that time when I first arrived there, Sam wasn't there on the floor at that time. He is

(Testimony of James Layton Nicholson.)

the one that come up later. He and Saul had been putting their tools away.

Q. And you know that at that time Sam was at his bench?

A. Putting away jigs and so on, yes, and when he come up to me, he had put the jigs away and the tools away and that was in connection with the hanging of the doors. They were already put away.

Q. And your first impulse was that since Sam had been employed to hang the doors you were going to send him home; is that right?

A. That is right, and the other thing too, is, I was mad. I am sorry to say, and I was going to send the carpenters home because we were practically caught up. Since then, we have added more cabinets and that has not surely been taking up the time, but most of them carpenters have been laid off on account of that.

Q. But after you calmed yourself down a bit, you instructed Mr. Stenert to assign Sam to other work; is that correct?

A. That is right, to put the butts on the jambs.

\* \* \* \* \*

Q. (By Mr. Nicolson): Now, this putting the butts on the jambs—if I get in a little over my head, you must be patient. A. I surely will.

Q. As I understand it, that is in the nature, in laymen's language, of attaching the hinges to the door jambs; is that about right?

A. That is right, that is correct.

Q. So that when the hinges are there, the doors

(Testimony of James Layton Nicholson.)

can be fastened to the hinges and then they swing back and forth; is that correct?

A. We use a templet with a morticer to cut, and then all you have to do is to screw them on.

Q. And thereafter Mr. Sam Agronovich was engaged in putting on these butts on the jambs?

A. That is right.

Q. And you worked, or rather, he worked at that for how long?

A. I don't remember offhand, I think it was about three days later when we were getting caught up, because we had gone as far as we could go without hanging the doors and I had to let him go.

Q. You let Sam Agronovich, Finklestein and Levine go because the work had run out; is that correct?

A. The work ran out and at the present [83] time I had no more orders.

\* \* \* \* \*

Q. (By Mr. Nicoson): On direct examination, Mr. Nicholson, you said this was a union job, did you not? A. That is right.

Q. And what do you mean by that?

A. It means that we are employing all union help on the job both carpenters and subcontractors.

Q. Does it also mean that Havstad, Mr. Havstad and Mr. Jensen or Havstad and Jensen have a contract with some union?

A. They belong to the Building Contractors Association.

Q. Well, do you know whether Mr. Havstad

(Testimony of James Layton Nicholson.)

or Mr. Jensen or Havstad and Jensen, either one of the three, have a contract with any labor union or unions?

A. Only through the Building Contractors Association as far as I know. Now, I couldn't say any other than that, but I do know they have it through the Building Contractors Association.

Q. How do you know that?

A. Because we have been in touch with the Building Contractors Association about these doors, in connection, you know, in [84] conversations with them.

Q. And is that the only way that you know that?

A. That is the only way I know, yes.

Q. And from the contact that you have had with the Building Contractors Association of Southern California Inc. that is what led you to state it was a union job?

A. That and the fact that I have to the very best of my ability run it according to the union rules, as best I possibly could.

Q. As a supervisor you did that and also as a supervisor you requested that union men be furnished to you or to the job?

A. That is right,

Q. Now, while you have been General Superintendent out there, have you had on previous occasions discussed with Mr. Fleisher certain phases of the work?



(Testimony of James Layton Nicholson.)

A. I just don't get what you mean by certain phases of the work.

Q. All right, prior to August 17, 1954, did you ever have any dealings with Mr. Fleisher?

A. Yes.

Q. That had—all right. Did any of these dealings have anything to do with the White Memorial Hospital project? A. Yes.

Q. Did they have anything to do with the people who were employed on the White Memorial Hospital project? [85]

A. Just with the men that are employed on our end of it.

Q. On your end of it? A. Yes.

Q. And in your discussion with Mr. Fleisher about these people, have you discussed with Mr. Fleisher any employees except those which are termed carpenters?

A. Any employees—not that I know of, no.

Q. So far as you know Mr. Fleisher does not represent or purport to represent anybody out there on that job except carpenters?

A. That is correct.

Q. And that has been the basis on which you have dealt?

A. That is right. In the other trades I deal with their respective business agents.

Q. And that is the basis you have dealt with him ever since he has been business agent and you

(Testimony of James Layton Nicholson.)

have been on the White Memorial Hospital job; is that right? A. That is correct.

\* \* \* \* \*

Redirect Examination

Q. (By Mr. O'Brien): Mr. Nicholson, in response to a question by Mr. Nicolson, you told us about some conversation in which Mr. Jensen asked Mr. Fleisher to send men to hang the doors. Could you give us in detail what that or how that [86] conversation went?

A. Well, yes. To start with, the day before I asked Mr. Jensen if he would telephone Mr. Fleisher and have him meet us out on the job for the specific reason of asking him if we could get men to hang the doors and if there was any way that we could work things around to where we could get this batch of particular doors hung as the job has to be completed. So he said that he would. And he called Mr. Fleisher and Mr. Fleisher came over on the job and Mr. Jensen himself asked him the question if he would be willing to send men out to hang the doors. And he said that he couldn't—well, I don't know exactly the word to say—but he said he couldn't say anything at that time at all. It is kind of hard for me to express myself.

Q. Was there anything more to the conversation than you have already told us, Mr. Nicholson?

A. That is as far as I know the full extent of it. We just asked him and explained to him the urgency of it and he gave us the statement that he couldn't say anything.

(Testimony of James Layton Nicholson.)

Q. And then in response to another question by Mr. Nicolson, my notes indicate that you testified that Nathan Fleisher told you to call Mr. Thomas?

A. That is right.

Q. Do you recall, does that recall something else to your memory now? [87]

A. Well, that was—let's see—that was on the 17th when they stopped us from hanging the doors, and it was about three days later, it was in the forenoon around 10 or 11 and again he came on the job and he told me, it was on the main floor or in the lobby, and at the same time he told me that he was reasonably sure that the doors would be released that day and that he or they was dealing back and forth between here and Wisconsin and Mr. Thomas was in a meeting and rather than to wait for him to tell Mr. Fleisher and then to have Mr. Fleisher tell us that maybe it would be better that we call direct to Mr. Thomas. So I immediately went into the telephone and called Mr. Jensen who was in the Glendale office and told him to call Mr. Thomas which he did. He wasn't able to contact him right then, but he did talk to him that evening.

Q. In any event, that was the extent of your conversation with Mr. Fleisher?

A. That is right. At that time is when I told him to send me out another door man though. He said he was reasonably sure that they would get them released and I said that that way I would have plenty of people and there was cabinets that I

(Testimony of James Layton Nicholson.)

would work him in on or whatever I had until the doors would be released because he felt reasonably sure we would be able to go ahead. So he sent out the man by the name of Allen.

Mr. O'Brien: May we have a stipulation that Earl E. Thomas is secretary-treasurer of the respondent Council? [88]

Mr. Nicoson: So stipulated.

Trial Examiner: All right, it is noted.

Mr. Nicoson: Lest the record be confusing, I am simply stipulating that E. E. Thomas is the secretary of the Council but I am not stipulating that that is the Mr. Thomas they talked about or that they talked to.

Trial Examiner: Very well.

Q. (By Mr. O'Brien): Also I believe you testified that Allen was a colored carpenter and hung the fire doors after the 17th?

A. That is right.

Q. Did anyone work with Mr. Allen in hanging those doors? A. No, he worked alone.

Q. He worked alone?

A. That is right, up to three-foot doors, is a one-man job.

Q. Now, among these doors—by the way, are there larger doors?

A. Yes, all room doors are three foot ten for the hospital beds to go through them.

Q. I think you testified on direct examination that your door-hanging operation when it was in

(Testimony of James Layton Nicholson.)

full force would be a six-man job; do you recall that?

A. That is what I had planned on, yes.

Q. Now, where would Sam Agronovich; what would his duties be on that? [89]

A. He was one of the men that was prefitting the doors with the jigs.

\* \* \* \* \*

### ARNOLD STEINERT

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. O'Brien): Will you please state your full name?      A. Arnold Steinert.

\* \* \* \* \*

Q. And may we have your address, please?

A. 1702 Orange Avenue.

Q. By whom are you employed, Mr. Steinert? [90]

A. Haystad and Jensen.

Q. And who is your immediate superior?

A. Mr. Nicholson.

Q. The same Mr. Nicholson who was just on the witness stand?      A. Yes, sir.

Q. Are you a member of any labor organization?      A. Yes.

Q. Of what one?

A. Local 563, Glendale.

\* \* \* \* \*



(Testimony of Arnold Steinert.)

Q. The United Brotherhood of Carpenters and Joiners of America? A. That is right.

Q. And what is your position now with Haystad and Jensen, Mr. Steinert?

A. Foreman, carpenter foreman.

Q. And as carpenter foreman, what trades do you supervise? A. Carpenters.

Q. Just carpenters? A. Yes.

Q. Do you have any supervision over the laborers?

A. Well, yes, I have been telling the laborers on the last [91] job. We don't have a labor foreman so I tell 'em what to do.

Q. Did you have any labor foreman on the 17th of August of this year? A. No.

Q. Now, calling your attention to the 17th of August, Mr. Steinert, what time did you get to work that morning? A. 7:30.

Q. What was the first thing that you did?

A. Well, I don't know.

Q. In connection with your work, I mean.

A. Well, we don't go to work until 8 but I get there early. Well, I just give the men their jobs.

Q. What jobs did you assign?

A. Well, I don't know. Well, Sam Agronovich started hanging doors.

Q. Just what did he do?

A. Well, he took his jigs and plane and joiner and grouters down to the basement where he was going to start hanging the doors. And I had two men building forms in the basement.

(Testimony of Arnold Steinert.)

Q. And were they also carpenters?

A. Carpenters.

Q. Now, you had other carpenters assigned to other jobs, did you?

A. Other jobs, I don't remember what they were doing.

Q. Did you have any laborers on the job on that day? [92]

A. Yes.

Q. Had you given them any duties?

A. Yes, I had 'em to move the doors from floor to floor, the doors that went on each floor we was starting scattering them from floor to floor.

Q. Sometime in the morning did you see Mr. Nathan Fleisher?

A. Yes.

Q. About what time?

A. Well, it was between 10 and 11 I guess.

Q. And where was it, or where were you when you first saw him?

A. Well, I don't remember, but I think it is in the lobby of the main hospital, the new hospital.

Q. You think it was in the lobby?

A. Yes.

Q. Were there any carpenters working there in your vicinity when you first saw him?

A. No.

Q. Did you have a conversation with Mr. Fleisher?

A. Yes.

Q. Was anyone else present?

A. No.

Q. Were you close to the place where the Paine doors were stacked when you had this conversation?

A. Yes. [93]

(Testimony of Arnold Steinert.)

Q. And what did you say to him and what did he say to you?

A. Well, he told me that we'd have to quit hanging the doors until they got it settled that they were union or non-union doors, and they were going to check on 'em and in a day or two they would be cleared and then we could go ahead and go to work.

Q. Did Mr. Nathan Fleisher use the word they all the way through there in your conversation?

A. Well, I don't remember now.

Q. Mr. Steinert, I want you to recall just as well as you can what Mr. Fleisher's words were to you?

A. Well, he said they were non-union doors, and they didn't have a label and we'd have to quit hanging the doors until it was settled.

Q. And then what did you say to him?

A. I said all right.

Q. And then what did you do?

A. Well, the laborers were moving the doors from floor to floor so I told them to leave them alone, leave 'em set and we went down into the basement where Sam Agronovich was working and told him we'd have to quit hanging the doors because they weren't union until they got it settled.

Q. Did you tell Mr. Agronovich to do anything else?

A. I told him he could put his tools away and then he could put on the door butts on the metal jambs. [94]

(Testimony of Arnold Steinert.)

Q. That was at the same time?      A. Yes.

Q. And Mr. Fleisher was present when you talked to Mr. Agronovich?      A. Yes.

Q. When you told the laborers to stop moving the doors, did you give them any other duties?

A. I don't think so, no.

Q. And then what did you do?

A. Well, I went on with my work, I mean, going around to check the other carpenters.

Q. Did you go into the office any time that morning?      A. No.

Q. When did you first see the superintendent, Mr. Nicholson?

A. I don't know, I guess it was around 11 or a little after 11 o'clock.

Q. How long after you had given these instructions to the carpenters and to the laborers was it that you first saw Mr. Nicholson?

A. Well, I'd say it was about a half hour.

Q. Do you recall asking some questions of certain carpenters on the day after you testified in Federal Court?      A. Talking to other carpenters?

Q. Yes, talking to several carpenters on the job, yes.      A. Yes, sir. [95].

Q. Who did you speak to first?

A. Saul Agronovich.

Q. What did you say to Saul and what did he say to you?

A. I told him that I was asked to go around and ask the men if they would hang the doors and so I am coming to him as being the steward on the

(Testimony of Arnold Steinert.)

job and what he thought I should do, whether I should or whether I shouldn't because I didn't want to get in trouble with nobody, and if he thought that I shouldn't, I wouldn't go around and ask 'em. And he said, well, that if the Court asked us to go round, well, then, he didn't see that it would be anything wrong with it. So I did.

Q. Tell us, as well as you recall, who you spoke to and what each carpenter said.

A. Well, I asked Saul, then I turned around and I said, well, would you hang, would you hang the doors, and he said no.

Q. Next?

A. Then I asked Lou Feldman which was working there with him, and he said no, that he wouldn't hang them either unless they were released. So then I went to ask Charlie Franklin and I asked him that, if he would hang the doors, and said no, not unless they were released so they could be hung. And then I went and asked Mr. Shand and he said yes, he would, but he was afraid to or something, I don't know, it was something on the idea. So I talked to Mr. Lokna and asked him if he would hang the doors and he said no, that he [96] couldn't, that they would just have to wait until they got settled.

\* \* \* \* \*

Cross Examination

Q. (By Mr. Nicolson): When you went to stop Sam Agronovich from hanging the doors, did Mr.



(Testimony of Arnold Steinert.)

Fleisher say anything? To Sam?

Q. Yes. A. Not that I know of, no.

\* \* \* \* \*

# JAMES C. BARRON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

Q. (By Mr. O'Brien): State your name, please, sir. A. James C. Barron. B-a-r-r-o-n.

Q. And your address, sir?

A. My business address?

Q. Yes, sir. [97]

A. 1049 Slauson Avenue, Los Angeles 11.

Q. What is your connection with Sand Door and Plywood Company?

A. I am vice-president and general manager.

Q. How long have you held that position?

A. Three years.

Q. How long have you been associated with the company?

A. I have been with them four years July 15th of this year.

Q. As vice-president and general manager, are you familiar with the general nature of the business? A. I am, sir.

Q. What is the business of Sand Door and Plywood Company?

A. We are wholesale jobbers of plywood doors and allied building materials.

(Testimony of James C. Barron.)

Q. Wholesale jobbers, do you have the exclusive agency with Paine Lumber Company?

A. Yes.

\* \* \* \* \*

The Witness: That is one of the firms that we represent. One of the firms that we represent exclusively is the Paine Lumber Company Ltd. of Oshkosh, Wisconsin.

Q. Do you have a franchise from Paine Lumber Company, a contract? [98]

A. We have a written agreement with the Paine Lumber Company to represent them exclusively.

\* \* \* \* \*

Q. (By Mr. O'Brien): Do you have a copy of the contract? — A. Yes.

\* \* \* \* \*

Q. Does that contract give you exclusive jurisdiction over any particular territory? [99]

\* \* \* \* \*

Trial Examiner: I will overrule the objection.

The Witness: Exclusive distributors for the Southern California territory.

Q. (By Mr. O'Brien): And that takes in what territory, sir?

Mr. Nicoson: May I have a running objection, Mr. Examiner?

Trial Examiner: Yes, I will let him testify as to the content of this document on the understanding that the document will be produced in the hearing room tomorrow morning for the inspection of

(Testimony of James C. Barron.)

counsel, and for that reason, I will overrule the objection to any such testimony.

Mr. Nicolson: And may the objection run to this entire line of testimony?

Trial Examiner: Yes, it may.

The Witness: Although I am not sure whether the agreement specifically says so as to the limits of the territory, it is generally assumed to mean from Fresno south.

Q. (By Mr. O'Brien): Does Sand, Door and Plywood Company have employees represented by any labor organization? [100]

A. We do.

Q. What employees are represented by what organizations?

A. Our warehousemen are represented by the A. F. of L. Brotherhood of Warehousemen and the local is No. 2288.

Q. And that is a teamster local?

A. No, that is a lumber and sawmill workers union.

Q. Lumber and sawmill workers?

A. Yes. And we also have contracts in our Los Angeles warehouse with Local 420 of the Teamsters Union, A. F. of L. And in San Bernardino we have a contract with the A. F. of L. Teamsters Union, and I believe the number is 465. Mr. Nicholson would probably know that.

Q. Is the lumber and sawmill workers union associated with the Brotherhood of Carpenters and Joiners of America?

(Testimony of James C. Barron.)

Mr. Nicoson: We will stipulate it is.

Mr. O'Brien: Thank you.

Q. (By Mr. O'Brien): As vice-president and general manager, did you cause anyone under your supervision to collect invoices and bills of lading showing the shipment of goods from Paine Lumber Company to yourself and the amounts that you paid for each shipment? A. Yes, I did.

Mr. O'Brien: Now, Mr. Examiner, these documents that I have here; two booklets, one is identified as Petitioner's Exhibit No. 4 in the U. S. District Court and the other is [101] identified as Petitioner's Exhibit 5 in the U. S. District Court, and these exhibits have been released to my custody by order of the U. S. District Judge Harry C. Westover for use in this proceeding. That is only until the Trial Examiner closes this proceeding. They are here now for the examination of opposing counsel. I would like to interrogate the witness about them. [102]

Mr. Nicoson: I offer to stipulate that the documents which Mr. O'Brien now holds in his hand, being Exhibits 4 and 5 in evidence in the matter pending before Judge Westover in the United States District Court of Southern California, show that in the year of 1953, the calendar year of 1953, Sand Door and Plywood Company received from the Paine Lumber Company Ltd., Oshkosh, Wisconsin, materials, including doors, in the sum of \$185,796.84. And for the year of 1954, from January 1st up to and including September 8, 1954, Sand Door and

(Testimony of James C. Barron.)

Plywood Company received from Paine Lumber Company Ltd., Oshkosh, Wisconsin, materials, including doors, in the sum of \$103,503.05. And that the invoices from which these figures were taken are included in Exhibits 4 and 5 in the U. S. District Court.

Mr. O'Brien: General Counsel will so stipulate.

Mr. LeBaron: So stipulated by the company.

Trial Examiner: The stipulation is noted.

Mr. O'Brien: And may it further be stipulated that these [103] figures represent goods shipped directly from Oshkosh, Wisconsin to various points in the State of California.

Mr. Nicoson: Is that a fact?

The Witness: Yes.

Mr. Nicoson: I will so stipulate.

Mr. O'Brien: So stipulated.

Mr. LeBaron: So stipulated.

Trial Examiner: Again, the stipulation is noted.

Q. (By Mr. O'Brien): Calling your attention to the 17th of August or before that time, do you remember or do your records indicate whether doors were obtained from Paine Lumber Company for use on the White Memorial Hospital project of the Medical College of—I'm sorry, of the College of Medical Evangelists?

Mr. Nicoson: Let the question be answered yes or no.

The Witness: Yes.

Q. (By Mr. O'Brien): And were those doors received from Paine Lumber Company?



(Testimony of James C. Barron.)

A. They were.

\* \* \* \* \*

Q. (By Mr. O'Brien): By looking at the invoices in the set [104] which is Petitioner's Exhibit No. 5 in the U. S. District Court, could you tell us when the doors were received in California?

A. Yes. Those doors were received—

Mr. Nicoson: Just a moment—all right.

Q. (By Mr. O'Brien): I show you an invoice on the letterhead of Paine Lumber Company, Ltd. addressed to Sand Door and Plywood Company and under description indicating the White Memorial Hospital—there are several pages there—approximately when were those doors received?

A. Those doors were received between the 10th and the 14th of August, 1954.

Q. And upon receipt of those doors, what was the first thing that you did?

A. We unloaded the doors from the car.

Q. Did you notify anyone of their arrival?

A. Yes, we notified the firm of Watson & Dreps to whom we sold the doors and had taken an order for.

Q. And what is the business of Watson & Dreps?

Mr. Nicoson: Just a moment, objected to as no proper foundation having been laid.

Trial Examiner: Do you know what their business is?

The Witness: Yes.

Trial Examiner: I will overrule it.

The Witness: They are mill work contractors.

(Testimony of James C. Barron.)

Q. (By Mr. O'Brien): Did you subsequently deliver these doors to Watson & Dreps?

A. They took delivery at our warehouse beginning the 14th of August and completed the morning of the 17th of August.

Q. The 17th of August. And did you receive word of any difficulty with regard to these doors from anyone?

Mr. Nicoson: Let that be answered yes or no.

The Witness: Yes.

Q. (By Mr. O'Brien): Approximately what time in the day?

A. It was in the forenoon or just before noon. I believe, I would say around 11:45.

Q. Did the word come to you in person or by telephone or by letter? A. By telephone.

Q. From whom? A. Mr. Dreps.

Q. And who is Mr. Dreps?

A. Mr. Dreps is a partner in the firm of Watson & Dreps.

Q. And what did Mr. Dreps say to you?

Mr. Nicoson: Objected to on the grounds that it is hearsay.

Trial Examiner: Again we are in the situation that whatever Mr. Dreps may have said to the witness may not constitute evidence of the truth of what he said.

Mr. O'Brien: That is true, Mr. Examiner, I just want to [106] develop this chronologically.

Trial Examiner: With that observation, I will overrule the objection. You may tell us what he said.

(Testimony of James C. Barron.)

The Witness: Mr. Dreps told me he had been advised by Mr. Jensen of the contracting firm of Havstad and Jensen that the carpenters on the job had refused to hang the doors because the doors did not have a union label.

Q. (By Mr. O'Brien): And then, what did you do?

Mr. Nicolson: May I now move to strike the answer on the grounds that it now appears to be hearsay twice removed.

Trial Examiner: Well, if it has any hearsay with respect to that we will of course, or it will, of course, not be used as evidence. It does have the appearance of hearsay according to these representations by Mr. Dreps. What is the purpose of bringing this in? [107]

\* \* \* \* \*

Q. (By Mr. O'Brien): What did you do next?

A. I told Mr. Dreps that I would look into the matter.

Mr. Nicolson: I am going to object to what he told Mr. Dreps as hearsay.

Mr. O'Brien: I don't care about that.

Q. (By Mr. O'Brien): What did you do next?

A. I called the Los Angeles County District Council of Carpenters to get in touch with a Mr. Cordil.

Mr. O'Brien: May we stipulate that, Mr. Nicolson, that Nick Cordil is the business representative on the Los Angeles District Council of Carpenters

(Testimony of James C. Barron.)

and Joiners of America and also president of Local 2288?

Mr. Nicolson: So stipulated.

Mr. O'Brien: Thank you.

Q. (By Mr. O'Brien): Did you speak to Mr. Cordil? A. I did.

Q. How long have you known Mr. Cordil?

A. Two years.

Q. What was your conversation with Mr. Cordil?

Mr. Nicolson: Objected to on the grounds that it calls for hearsay.

Trial Examiner: I will overrule the objection.

The Witness: I told Mr. Cordil of our trouble and asked him if he could help us out. His reply was that he was not familiar with the case in question and suggested that I call [108] Mr. Earl Thomas of the Los Angeles County District Council of Carpenters to get further information which I proceeded to do. Shall I go on?

Q. (By Mr. O'Brien): Now, in there anywhere, did you call the office of Havstad and Jensen?

A. Yes.

Q. Where did that fit in?

A. It fitted in between the call that I received from Mr. Dreps and the time that I was able to reach Mr. Cordil at the Council.

Q. Now, who did you talk to at Havstad and Jensen? A. Mr. Jensen.

Q. Did you talk to anyone else?

A. It is quite possible—I believe that Mr. Nichol

(Testimony of James C. Barron.)

son came on the telephone during the lengthy conversation we had.

Q. Did you talk to Mr. Fleisher?

A. Not the first time, but there were several subsequent conversations with Mr. Jensen since he asked to be informed of what we had found out through our efforts with the District Council and during one of these conversations.

Q. I just want to get the sequence here. First of all, you had this telephone call from Mr. Dreps and the next thing you did was to try to reach Mr. Cordil; is that correct?

A. No, I called Mr. Jensen before I called Mr. Cordil. [109]

\* \* \* \* \*

Q. (By Mr. O'Brien): Did you finally talk to Mr. Thomas? A. Yes, I did.

Q. About what time?

A. About 4 o'clock on the 17th.

Q. And what was your conversation with him?

A. I asked Mr. Thomas, well, first I identified myself, and I told him of my conversation with Mr. Cordil and asked him what the story was regarding the hanging of the doors in the White Memorial Hospital. Mr. Thomas replied that he had just been given the information and he wasn't too familiar with it, but that it was his intention to get in touch with the local union in the immediate area of the Paine Lumber Company in Wisconsin to find out if the doors were union-made doors.

Q. Is that the extent of that conversation?



(Testimony of James C. Barron.)

A. Yes, that is the extent of it, and he said he would advise me, the only thing he said was that he would advise me as soon as he heard from the union as to whether they were [110] union-made doors.

Q. Did you have any further conversation with Mr. Thomas? A. I did.

Q. When?

A. The next day about the same time, it was around 3:30 or 4 o'clock in the afternoon that I called him.

Q. And what was that conversation?

A. I called him to find out and Mr. Thomas advised me that he had received a telegram from the secretary of the local of the Fox River Valley Council of Carpenters in Appleton, Wisconsin, who he said had jurisdiction in that area. And that, well, he read the telegram over the telephone to me, and it said that the doors were not union made and that Paine Lumber Company did not belong to any union. I replied to him that—well, what are we going to do here, because the doors are here, and we are an innocent bystander. We are union and Watson & Dreps are union and the contractors are union, even the people that hauled the doors out here on the train were union people. He said well, that under the circumstances we can't hang non-union doors, but he said to me, why don't you buy union doors? And I said well, that would be impossible. And he asked me why and I went into some lengths to explain to him why.

Q. What did you say to him?

(Testimony of James C. Barron.)

A. I said to him that in the Los Angeles area there are four doors generally specified for institutional work, all of whom [111] we are unable to buy from. And he asked why, and I went into detail, and this is it.

Q. Just tell me what you said to Mr. Thomas.

A. I told him that the four doors were in order, the Rottis door, made by the Rottis Plywood Corporation of Marshfield, Wisconsin, the Hardwood Products door, made in Neenah, Wisconsin, and the U. S. Plywood door, made in Algonah, Wisconsin. And the Rottis Company maintains a warehouse in Los Angeles, stocks their own doors and sells to the same accounts we do. The Hardwood Products Corporation has a factory representative here who sells direct to the accounts that we sell to, and the U. S. Plywood Corporation also maintains a warehouse here and sells direct to the accounts that we do. The only other firm that we could therefore buy from that makes this type of door is the Paine Lumber Company Ltd. of Oshkosh, Wisconsin. His reply was that that was, or that had nothing to do with it, that they could not do anything about it. And I asked him what about the jobs, the institutional jobs that we had back at the mill in production, the stock orders that we had back there, the stock in our warehouse and the stock on the way. And he suggested that if I would give him a list of institutional jobs that were in production at the Paine Lumber Company, he would go before his board and see whether he could get clearance for the hanging of those doors

(Testimony of James C. Barron.)

when and if they arrived in Los Angeles. I then asked him what about the stock [112] on the floor, and he immediately replied that he would see what he could do about those too, at the same time when he went before the board. I then asked him about the stock orders that were in production back at the mill, and he suggested that I had better cancel them and order no further doors from the Baine Lumber Company. That was the extent of the conversation.

Q. Have you had any further conversation with Mr. Thomas? A. None since that day.

Q. Were you present on or about October 5 when Mr. Sand talked to Mr. Nicholson on the telephone?

A. I was.

Q. Did you hear Mr. Sand's end of the conversation? A. I did.

Q. Was anyone else present besides you and Mr. Sand? A. Only Mr. Sand and myself.

Q. What do you recall that Mr. Sand said?

Mr. Nicoson: Objected to as hearsay.

Mr. O'Brien: That was something that Mr. Nicholson went into, I don't know why. There is testimony from Mr. Nicholson as to what he understood Mr. Sand to say. Again, I don't know why Mr. Nicholson wanted to go into it, but let's find out what this witness knows.

Mr. Nicoson: It does not relieve it from being hearsay as between this gentleman and Mr. Sand.

Trial Examiner: Well, now, this is something which the [113] witness heard with his own ears.

(Testimony of James C. Barron.)

Mr. O'Brien: It is not hearsay, it is a question of whether it is relevant or material.

Trial Examiner: Well, why are we concerned with it? Did you say Mr. Nicholson or Mr. Nicoson?

Mr. O'Brien: Mr. Nicoson brought it in through Mr. Nicholson and since he opened it up, I thought we might as well get the whole story.

Trial Examiner: Well, I will let you go ahead and will overrule the objection, but I have no recollection of that.

Mr. Nicoson: And just for the record, may I also object to it on the grounds that it is immaterial.

Trial Examiner: It may be, we will see, but I will let it in at the present time.

The Witness: Mr. Sand told Mr. Nicholson that in the previous day's testimony in the Federal District Court before Judge Westover that the Judge had said just before recessing the Court for the day that he wanted the union and the contractor to get together and hang the doors, find some way to hang the doors. And Mr. Sand thought it would be a good idea for Mr. Nicholson to ask them to hang the doors since the Court had specifically asked them to do that, that was the gist of the conversation.

Q. (By Mr. O'Brien): I think you said that you had at least one telephone conversation with Mr. Fleisher; do you remember [114] where that fits in now?

A. Yes, well, I don't recall whether it was on the 17th or 18th, but it was almost immediately after I

(Testimony of James C. Barron.)

had heard about the case in question that the doors were not being hung.

Q. Well, as you recall, what did you say to him and what did he say to you?

A. Mr. Fleisher was put on the telephone, since I had been talking to Mr. Jensen, and Mr. Fleisher happened to be in the office and they put him on the telephone and he asked me where the doors were manufactured, what was the name of the company that manufactured them, and I gave him that information over the telephone. And while he was on the telephone, I asked him what was the trouble, and he said that the doors don't have a union label, and they have to be cleared before I can permit them to be hung.

\* \* \*

#### Cross Examination

Q. (By Mr. Nicoson): You say that this was a conversation that you had with Mr. Fleisher following one that you were having with Mr. Jensen?

A. It was in the same telephone conversation, he was put on the telephone, yes.

Q. Well, now, do you understand, or do I understand you to say that Mr. Jensen was also on the telephone at the time you [115] were talking to Mr. Fleisher?

A. No, that is incorrect.

Q. Then, as far as you know, you and Mr. Fleisher were the only ones that had telephones to your ears?

A. That is right.

Q. Now, when he asked you about the manufacturing of the doors, what did you tell him?



(Testimony of James C. Barron.)

A. The manufacturing of the doors, I told him where the doors were manufactured and the name of the company that manufactured them.

Q. What did you tell him, that is what I am asking?

A. I told him the doors were manufactured by the Paine Lumber Company Ltd., of Oshkosh, Wisconsin, and I spelled it for him.

Q. And that was on the 17th of August?

A. I believe that was on the 17th.

Q. That was when it was, at least as far as you now recall?

A. As far as I now recall.

Q. The day on which the difficulty about the doors arose?

A. Arose?

Q. At least that is the date you first received information about it?

A. That is correct.

Q. Now, in this telephone call, did you originate it, or did Mr. Jensen originate it? [116]

A. It is my recollection that Mr. Jensen originated that telephone call.

Q. And when he called you, I take it that you were at your office at the Sand Door and Plywood Company?

A. I was.

Q. And what did he first say to you, as best you now recall?

A. He said that the carpenters, that Mr. Fleisher, as their business agent refused to hang the doors.

Q. What else?

A. And that he wondered what could be done to get the doors hung, and it was just at that point that Mr. Fleisher evidently asked to talk to me to find out

(Testimony of James C. Barron.)

where the doors were manufactured and by whom?

Q. Then when he told you, did he tell you also at the same time that the doors didn't have a union label on them?     A. That is right.

Q. Is that about the full extent of your talk with Mr. Fleisher and Mr. Jensen on that occasion?

A. Yes.

Q. Now, you said in your testimony a moment ago that you overheard Mr. Sand's conversation with Mr. Jensen over the telephone; is that right?

A. Yes.

Q. And had you talked with Mr. Sand about this before you put in the call to Mr. Jensen? [117]

A. The conversation with whom?

\* \* \* \* \*

Q. (By Mr. O'Brien): Do you recall the telephone conversation that Mr. Sand had with Mr. Nicholson?     A. I do.

Q. Before Mr. Sand had that conversation, had you and Mr. Sand discussed what he was going to talk to Mr. Nicholson about?

A. No. [118]

Q. Had you been with Mr. Sand when he received some sort of information or report with respect to what went on down at the Court?

A. Yes.

\* \* \* \* \*

Q. Now, you also have stated that you bought some doors from Paine Lumber Company for the White Memorial Hospital; is that correct?

A. Yes.

(Testimony of James C. Barron.)

Q. Now, can you take these invoices and tell us just how much those doors were invoiced out at?

A. I sure can.

Q. Will you please do that?

A. Yes. Evidently the final amount has not been carried forward here on their invoice.

Trial Examiner: Give us the separate amounts then.

The Witness: Well, there is \$750. \$4,275.34.

Mr. Nicoson: Four thousand and what?

The Witness: \$4,275.34. And there is \$825. \$1275.75. \$45. That seems to be the extent of it.

Mr. Nicoson: Did you take off those figures as you went through?

The Witness: Yes.

Mr. Nicoson: I mean, are you now in a position to add them up to see if my total is correct?

The Witness: Oh, no, I didn't, I am sorry. I will do it. I get a total of \$7,171.09.

Mr. Nicoson: Thank you, sir, so do I.

Q. (By Mr. O'Brien): Now, those amounts represent doors which you obtained from the Paine Lumber Company for the ~~White Memorial Hospital~~ job; is that correct? A. That is right.

Q. And those were all transactions within the year 1954? A. That is correct.

Q. Were there any such transactions in the year 1953?

A. With respect to the White Memorial Hospital? [120]

Q. Yes. A. No.

(Testimony of James C. Barron.)

Q. You talked with Mr. Thomas and he asked you to give him a list of the institutional jobs so that he could go before the Council or the Board to see if he could get any clearance; is that your testimony, sir?      A. That is right.

Q. Did you give Mr. Thomas such a list?

A. I did not. [121]

\* \* \* \* \*

Mr. O'Brien: Mr. Nicoson has handed to me the constitution and laws of the United Brotherhood of Carpenters and Joiners of America, the constitution as amended January 1, 1954. And I would like to inquire of Mr. Nicoson whether or not the constitution that I now have was in effect in August of 1954 and presently in effect.

Mr. Nicoson: I understand that that is right. I so understand that to be right.

Mr. O'Brien: I will ask the Reporter to mark this as General Counsel's Exhibit No. 3.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

Mr. O'Brien: I will now offer that in evidence.

Trial Examiner: Hearing no objection to General Counsel's Exhibit No. 3, it is admitted.

(Thereupon, the document heretofore marked General Counsel's Exhibit No. 3 for identification was received in evidence.)

[See pages 200-201.]

Mr. O'Brien: I will call Mr. Jensen.

EMMETT R. JENSEN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

[124]

Q. (By Mr. O'Brien): State your full name, please, sir? A. Emmett R. Jensen.

Q. Your business address, sir?

A. 312 North Boyle; that is the mailing address. And the office address is 1721 New Jersey.

Q. And the business address is 1721 New Jersey; is that correct? A. That is right.

Q. And the first address, that is the address of what?

A. That is the address of the White Memorial Hospital business office.

Q. And what is your business, sir?

A. General contractor.

Q. Are you licensed by the State of California?

A. Yes, sir.

Q. As an individual? A. Yes, sir.

Q. How long have you had that license approximately?

A. Well, I believe since about 1935 or 1936. No, I think before that—maybe it was 1933 or 1934; I do not remember exactly.

Q. Are you associated with anyone else in the construction business in connection particularly with the White Memorial Hospital job?

A. Yes, sir.

Q. With whom?

[125]



(Testimony of Emmett R. Jensen.)

A. Mr. Larry C. Havstad.

Q. What is the nature of the business relationship with Mr. Havstad?

A. It is a joint venture.

Q. A joint venture solely for the construction of the hospital building, is that correct?

A. Or any other building on the campus.

Q. When was the joint venture formed, approximately?

A. I believe it was in 1952, in July, I believe, of 1952.

Q. Is it contemplated that the joint venture will be dissolved when this building project is completed?

A. I imagine so.

Q. Are you a member of any organization of the general contractors?

A. Yes.

Q. Of what organization?

A. Building Contractors Association.

Q. The Building Contractors Association, Inc.?

A. I think that is right.

Q. How long have you been a member approximately?

A. Just about ever since I had a contractor's license. I think probably within a year of that time or after that time.

Q. With reference to the hospital doors, what was the first notice that you had of any difficulty with those doors? [126.]

A. When Mr. Nicholson, the superintendent, called me in Glendale and told me they were having trouble with the doors.

(Testimony of Emmett R. Jensen.)

Q. Do you recall when that was?

A. Well, I think that was the 17th of August.

Q. What action did you take?

A. I called Mr. Phillips of the Building Trades Council.

Q. Mr. Phillips?

A. Yes, Mr. R. N. Phillips.

Mr. O'Brien: May we stipulate that R. N. Phillips is a business representative of the Los Angeles District Council of Carpenters?

Mr. Nicoson: We can, but the witness just said that he called Mr. Phillips a member of the Building Trades Council.

Mr. O'Brien: I will have him identified further, but I just want this particular man identified if counsel will so stipulate.

Mr. Nicoson: I will stipulate to what you ask me but that is not the man which the witness has identified yet.

Trial Examiner: Well, the stipulation is to the office of Mr. Phillips in the Carpenters Council, is that not right?

Mr. Nicoson: He is a business agent and I will stipulate to that.

Q. (By Mr. O'Brien): How long have you known Mr. Phillips?

A. My business has been in Glendale ever since I have been in the building business, mostly in Glendale, and Mr. Phillips [127] was the business agent in Glendale.

(Testimony of Emmett R. Jensen.)

Mr. Nicolson: Your Honor, I am sorry, but I am going to have to object to this type of answer.

Trial Examiner: I will sustain it. The question is how long have you known Mr. Phillips.

The Witness: I will say six years.

Q. (By Mr. O'Brien): Have you had business dealings with him in that time?

A. Oh, yes; sure.

Q. In what capacity?

A. As the business agent for the carpenters' local there in Glendale.

Q. Thank you.

Now, what was your conversation with Mr. Phillips?

A. Well, I said to him that we were in trouble about the doors, and I asked, or rather he asked what was the trouble. I told him what kind of doors they were and he said that he thought that those doors were all right. But he said: "However, I will give you a man that you can call, a Mr. Knight," I don't remember if he gave me the phone number or whether he had me transferred to this Mr. Knight.

However, I did talk to Mr. Knight.

Q. Did you talk to Mr. Knight that same day?

A. Yes.

Q. And had you ever heard of Mr. Knight before? [128]

A. No.

Q. Now, later that same week, did you have a talk with Mr. Thomas?

A. I can't say whether it was the same week or whether it was in the first part of the following week

(Testimony of Emmett R. Jensen.)

because I don't remember exactly, but I did have a talk with him.

Q. And did you call Mr. Thomas?

A. I called Mr. Thomas. [129]

\* \* \* \* \*

Q. (By Mr. O'Brien): What was your conversation with Mr. Thomas?

A. Well, I asked him what had happened and that I was told to call him.

Trial Examiner: Just tell us what passed between you?

The Witness: That was—

Mr. O'Brien: I believe that that was what the witness was doing or attempting to do, Mr. Examiner.

Trial Examiner: Well, I don't think so. Go ahead.

The Witness: I asked him had he heard about the doors yet, had he gotten any report. And he told me he was going to get a report from back East and I asked him if he had gotten that report and he said yes, that they had gotten a message from the local back there—I forgot the name of the town—but he said they had inquired about them and had found out that the Paine Lumber Co. was not a union operation.

Q. (By Mr. O'Brien): Was there any more to the conversation?

A. He said that the carpenters would not be able to handle those doors.

Q. Is that all there was to the conversation?

A. Yes, sir.

(Testimony of Emmett R. Jensen.)

Q. Have you met Mr. Nathan Fleisher?

A. Oh, yes.

Q. Have you had any conversation with Mr. Fleisher relative to these doors? [130]

A. Well, I did the other day. Yes, just recently—about two or three days ago.

Q. Where did you have that conversation?

A. Over the—well, over on the White Memorial Hospital job.

Q. And who was present?

A. Mr. Nicholson.

Q. Mr. Nicholson and Mr. Fleisher and yourself. Was there anyone else present?

A. Well, the man in the office there, Mr. Harry Kress, the secretary in the office.

Q. And what was the conversation?

A. Well, I asked Mr. Fleisher if it would be possible for us to some way work out a deal whereby we could get these doors hung, and he said, well, that this is in trial and let's not even talk about it. And we talked quite a bit but we couldn't talk about working out any kind of a deal whereby we could hang the doors.

Q. I want you to just tell us, if you can, I know it is difficult to reconstruct these things, but if you can, will you please tell us just what was said and try to put yourself back into the same position where you were and tell us what you said and what Mr. Nicholson said and what Mr. Fleisher said, we just want the conversation and want to know what the conversation was. [131]



(Testimony of Emmett R. Jensen.)

A. We kept talking back and forth and I kept asking him if there wasn't some way that he thought that we could get together with the District Council down here and, in some way, work out terms to get these doors hung. And Mr. Fleisher said that he couldn't talk about it and we tried to approach it, we tried to approach the subject in several ways, but Mr. Fleisher said: I just can't talk about it.

\* \* \* \* \*

Q. (By Mr. O'Brien): I know it is very difficult, sir, but what I am asking you—

Imagine that I am Mr. Fleisher and you put the questions to me and then imagine that you are Mr. Jensen.

A. Well, I kept asking if there wasn't some way, if there wasn't some way he could figure out so we could work out a deal whereby we could get the doors released so they could be [132] hung. He said: "I am sorry, Mr. Jensen; I can't even talk about it and that is that."

Mr. O'Brien: That is all. Thank you.

### Cross Examination

Q. (By Mr. Nicoson): Mr. Jensen, how long did you say you had been a member of the Building Contractors Association of Southern California?

A. Well, I would say, —well, I don't remember the exact date, but it was probably in 1934 or 1935; anyway, about a year after I got my contractor's license.

(Testimony of Emmett R. Jensen.)

Q. Can you tell us a little bit about the Building Contractors Association?

A. Well, it consists of a group of general contractors here in the Los Angeles area, or I would say in the Los Angeles County area, but this particular chapter that I belong to is the Glendale-Burbank chapter.

Q. Now, in the period of time that you have been a member of the Building Contractors Association, which is, I think, in ordinary parlance of the trade, referred to as the BCA—am I correct in that?

A. That is right.

Q. Now, in your relationship with that organization, have you ever had occasion to sign a card which bound you to recognize and be governed by any labor contract that the BCA had negotiated in your behalf? Do you understand the question? [133]

A. You mean like the labor agreement?

Q. Yes.      A. Yes.

Q. And, since 1933 or 1934—I think that is the date that you have at least tentatively given—since that time, when you became a member of BCA—am I right about that date?      A. That is right.

Q. Is it not a fact that the BCA has negotiated for you and on your behalf labor contracts with labor unions governing your operation as a general contractor?      A. That is right.

Q. And you have, through all of that period of time, been governed by those contracts of the BCA and the labor unions?      A. That is right.

(Testimony of Emmett R. Jensen.)

Q. And are you at present a member of the BCA? A. Yes.

Q. Are you aware that the BCA carried on negotiations in the summer which resulted in a new contract? A. Yes, sir.

Q. Have you seen the new contract?

A. Yes.

Q. And have you had a copy of it?

A. Yes.

Mr. Nicoson: I would like to have this marked as Respondent's Exhibit No. 1. [134]

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 1 for identification.)

Q. (By Mr. Nicoson): Mr. Jensen, I hand you a document which, for the purpose of identification, has been marked as Respondent's Exhibit No. 1, and I will ask you to examine it and state if that is not a copy of a printed contract, or rather if that is not a printed copy of a contract which BCA and certain labor organizations negotiated effective as of May 1, 1954?

A. I believe it is. I have not read all of it, but I believe it is.

Q. And, after it was negotiated, you attended a meeting of the BCA during which meeting the terms and provisions of the contract were explained to you, is that correct?

A. Well, I didn't happen to attend the meeting.

Q. But there was such a meeting, is that right?

A. That is right.

(Testimony of Emmett R. Jensen.)

Q. And you were furnished by the BCA with a contract which is, so far as you can tell, identical to the one that you have before you?

A. I think so.

Q. And you know that to be the contract which is, in effect, between the BCA and certain labor organizations on your behalf?

A. That is right. [135]

Mr. Nicolson: I will offer that in evidence.

Mr. O'Brien: No objection.

Mr. LeBaron: No objection.

Trial Examiner: There being no objection, it will be received in evidence.

(Thereupon, the document heretofore marked Respondent's Exhibit No. 1 for identification was received in evidence.)

[See pages 201-204.]

Q. (By Mr. Nicolson): Mr. Jensen, do you have anything to do with the operation of the construction of the White Memorial Hospital?

A. Yes, sir.

Q. Mr. Nicholson who testified yesterday, stated that he was the general superintendent out there. Now, is that right? A. That is right.

Q. And I take it that the—you will correct me if I am wrong—that you are the one, for want of a better word, the superior officer over Mr. Nicholson, is that correct? A. Yes.

Q. In other words, he is responsible to you?

A. That is right.

(Testimony of Emmett R. Jensen.)

Q. And, in case he needs any orders, he gets them from you, does he? A. That is right.

Q. And he gets his instructions from you; is that correct? A. I guess so. [136]

\* \* \* \* \*

EMMETT R. JENSEN

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Nicolson): You are the same Mr. Jensen who previously [137] testified, are you not?

A. Yes, sir.

Q. I show you again Respondent's Exhibit No. 1 in evidence which you have identified as the master labor contract. I will ask you whether or not insofar as your labor relations on the White Memorial Hospital and the buildings for the College of Medical Evangelists is concerned, was that operation operated under that contract on or about the 17th of August, 1954?

A. As a member of the Building Contractors Association, I naturally accept their negotiations.

Q. And this was the contract that you were operating your general contracting business under on August 17, and is it the contract that you have been operating under ever since?

A. Well, that is the only contract that there is.

Q. Then you are giving me a yes answer, are you? A. Yes. \* \* \* \* \*



Mr. Nicoson: Yesterday, your Honor, in my questions to Mr. Baron, we developed some figures with respect to the amount of goods purchased from the Paine Lumber Company, which was \$7,171.09. On further reflection and mathematical calculation, [138] we now find that the figure should be \$9,148.32 and I offer to stipulate that figure in place and instead of the \$7,171.09.

Trial Examiner: Is that agreeable?

Mr. O'Brien: General Counsel will so stipulate.

Trial Examiner: The stipulation is accepted and noted. [139]

\* \* \* \* \*

## GENERAL COUNSEL'S EXHIBIT No. 2

### By-Laws and Trade Rules District Council of Carpenters

#### Name

Section 1—This body shall be known as the Los Angeles County District Council of Carpenters and shall be composed of regularly elected delegates from all Local Unions of the United Brotherhood of Carpenters & Joiners of America, located in Los Angeles County. It shall have such powers as are specified under the Constitution and General By-Laws of said U. B. of C. and J. of A. and these By-Laws.

\* \* \* \* \*

#### Instruction to Members

#### Section 16—

\* \* \* \* \*

(b)—It shall be the duty of every member who knows of any member violating any of the by-laws, or trade rules to prefer charges in the District Council against this member.

\* \* \* \* \*

(d)—Only members of the United Brotherhood of Carpenters and Joiners of America shall be permitted to do carpenter work on any job. No member shall use, handle, install or erect any material produced or manufactured from wood that is not produced and manufactured by members of the United Brotherhood of Carpenters and Joiners of America.

\* \* \* \* \*

(g)—All Carpenter Foremen must be members of the United Brotherhood of Carpenters and Joiners of America; no Foreman shall hire non-union carpenters.

\* \* \* \* \*

#### Foremen

Section 20 (a)—All carpentry foremen must be members of the United Brotherhood of Carpenters and Joiners of America. No foreman shall hire non-union carpenters.

\* \* \* \* \*

(f)—All foremen are to be held equally responsible (the same as the Steward) for the enforcement of all By-Laws and Trade Rules of the District Council. Violators of this paragraph shall be subject to a fine of \$100.00 and/or expulsion.

\* \* \* \* \*

*Affiliated Local Unions and Representatives*

\* \* \* \* \*

*The Oaks-Mint Canyon*

Clybourn-Sunland      Ave. 64-Pasa. City Limits

Local No. 563

Citrus 3-2980 - Chapman 5-1521

Arthur H. March & Earl M. Galpin, Bus. Rep.

L. A. Wilson, Rec. Secy.

Wm. J. Seymour, Fin. Secy.

Office 195 W. Chevy Chase, Glendale

Meets Fridays

Los Feliz-Riverside Dr. Arroyo Seco

\* \* \* \* \*

*Mission and Valley Blvd.*

Mission-Eastern Ave.      Indiana-Coyote Pass

Local No. 1976

Angelus 1-5767

Nathan Fleisher, Bus. Rep.

Cecil Dell, Rec. Secy.

Sol Agronivitz, Fin. Secy.

Office: 2526½ Brooklyn Ave., L. A. 33

Meets 1st & 3rd Wednesdays

34th Street

\* \* \* \* \*

*GENERAL COUNSEL'S EXHIBIT No. 3:*

Constitution and Laws of the United Brotherhood  
of Carpenters and Joiners of America

\* \* \* \* \*

*Jurisdiction of District Councils*

A. Section 26. Where there are two or more Local Unions located in one city they must be represented in a Carpenters' District Council, composed exclusively of delegates from Local Unions of the United Brotherhood, and they shall be governed by such Laws and Trade Rules as shall be adopted by the District Council and approved by the Local Unions and the First General Vice-President. The General President shall have power to order such Local Unions to affiliate with such District Council, and to settle the lines of jurisdiction of such District Council, subject to appeal.

\* \* \* \* \*

## RESPONDENTS' EXHIBIT No. 1

Labor Agreement Between Southern California General Contractors and United Brotherhood of Carpenters and Joiners of America

This Agreement entered into this 1st day of May, 1954, by and between the Associated General Contractors of America, Southern California Chapter, on behalf of its eligible members, the Building Contractors' Association of California, Inc., on behalf of its signatory members; the Excavating and Grading Contractors' Association, Inc., on behalf of its signatory members; and the Home Builders Institute, on behalf of its eligible members, parties of the first part, hereinafter referred to as the Contractors, and the United Brotherhood of Carpenters and Joiners of America, for its affiliated District Coun-

cils and Local Unions in Southern California, which have jurisdiction over the work in the territory hereinafter described; and the Building and Construction Trades Council of Los Angeles, all affiliated with the Building and Construction Trades Department of the American Federation of Labor, parties of the second part, hereinafter referred to as the Unions.

Witnesseth.

Purposes:

Whereas, the Contractors are engaged in general contract construction work in Southern California; and, Whereas, in the performance of its present and future contracting operations the Contractors are employing and will employ large numbers of workmen; and, Whereas, the Contractors desire to be assured of their ability to procure employees for all of the work which they may do in the area hereinafter defined as Southern California in sufficient numbers and skill to assure continuity of work in the completion of their construction contracts; and, Whereas, it is the desire of the parties to establish uniform rates of pay, hours of employment, and working conditions for the workmen employed by the Contractors; and, Whereas, it is the desire of the parties hereto to provide, establish and put into practice effective methods for the settlement of misunderstandings, disputes or grievances between the parties hereto to the end that the Contractors are assured continuity of operation and the workmen are assured continuity of employment, and industrial peace is maintained and the business of the industry



efficiently increased; Now, Therefore, in consideration of the premises and of the respective covenants and agreements of the parties hereto, each of which shall be interdependent, It Is Hereby Agreed:

I.  
Coverage

\* \* \* \* \*

F. That the Contractors and their subcontractors shall have freedom of choice in the purchase of materials, supplies and equipment; save and except that every reasonable effort shall be made by Contractors and their subcontractors to refrain from the use of materials, supplies or equipment, which use will tend to cause any discord or disturbance on the project. Workmen shall not be required to handle non-union material.

\* \* \* \* \*

XIII.  
Qualifications

A. That each of the parties hereto warrants and agrees that it is under no disability of any kind, whether arising out of the provisions of its Articles of Incorporation, Constitution, By-Laws, or otherwise, that will prevent it from fully and completely carrying out and performing each and all of the terms and conditions of this Agreement and, further, that it will not by the adoption or amendment of any provision of its Articles of Incorporation, Constitution, or By-Laws, or by contract or by any means whatsoever, take any action that will prevent or impede it in the full and complete performance of

each and every term and condition hereof. The warranties and agreements contained in this paragraph are made by each of the signatories hereto on his own behalf and on behalf of each organization for which it is acting hereunder. The individuals signing this Agreement in their official capacity and the signatories hereto hereby guarantee and warrant their authority to act for and bind the respective parties or organizations whom their signatures purport to represent, and the local unions on whose behalf the said parties are signing the said Agreement.

B. This Agreement contains all of the covenants, stipulations and provisions agreed upon by the parties hereto, and no agent or representative of either party has authority to make and none of the parties shall be bound by nor liable for any statement, representation, promise, inducement or agreement not set forth herein; that any provision in the working rules of the Unions, with reference to the relations between the Contractors and their employees, in conflict with the terms of this Agreement shall be deemed to be waived and any such rules or regulations which may hereafter be adopted by the Unions shall have no application to the work hereunder.

**CERTIFICATE**

This is to certify that the attached proceedings before the National Labor Relations Board for the 21st Region in the matter of: Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, etc., and Sand Door and Plywood Co., Case No. 21-CC-189, Los Angeles, California, October 18-22, 1954, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

**ACME REPORTING COMPANY,**

Official Reporters

/s/ By **FOSIG RAINIER,**

Field Reporter

(92064 11/11/12)

[fol. 208] Minute entry of argument and submission—  
December 13, 1956 (omitted in printing).

[fol. 210]

**IN UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT.**

No. 15,026

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

LOCAL 1976, UNITED BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA, AFL, and LOS ANGELES COUNTY  
DISTRICT COUNCIL OF CARPENTERS and NATHAN FLEISHER,  
Respondents.

PETITION FOR ENFORCEMENT OF ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

OPINION—February 12, 1957

Before: Healy, Lemmon, and Fee, Circuit Judges.

Lemmon, Circuit Judge.

While the National Labor Relations Act, hereinafter referred to as the Act, has been termed in "its inception a novel experiment", which "has remained a controversial piece of legislation",<sup>1</sup> its provisions dealing with secondary boycotts—at least insofar as they are applicable to the instant case—seem to us to be tolerably clear and eminently fair.

*1. Statement of the Case*

The Sand Door and Plywood Company, of Los Angeles, California hereinafter Sand, on August 25, 1954, filed a

<sup>1</sup> Proposals for Modification of Unfair Labor Practice Procedures Under the NLRA, Stanford Law Review, December, 1956, Vol. 9, No. 1, pp. 155 et seq.



charge against the respondents, hereinafter the Union, alleging that the latter had engaged in unfair labor practices within the meaning of 29 USCA §158(b)(4)(A).

[fol. 211]. On September 24, 1954, the General Counsel of the National Labor Relations Board, hereinafter the Board, before which the charge had been filed, presented a complaint against the Union, which in substance alleged that the Union, "since on or about August 17, 1954, . . . [had] instructed the employees of Havstad & Jensen" at a certain college to be detailed hereinafter, and the employees of other employers, "to refuse to install Paine Rezo doors [infra] because [the Union's] rules and by-laws prohibit the installation of products not bearing the union label," etc. It was further alleged that by such conduct the Union had "engaged in, and . . . induced and encouraged the employees of Havstad & Jensen and of other employers to engage in, strikes or concerted refusals in the course of their employment to use, manufacture, [etc.] . . . goods, articles, [etc.] . . . or to perform services."

The complaint also averred that an object of the Union's "acts and conduct . . . is to force or require Havstad & Jensen, Watson and Dreps [infra] and other employers or persons to cease using, [etc.] or otherwise dealing in the products of Sand and Paine and to cease doing business with Sand and Paine".

By the above acts, the complaint continued, the Union was engaging in unfair labor practices within §158(b)(4)(A).

The Union's answer denied the commission of the unfair labor practices alleged, and affirmatively averred that "the Board lacked jurisdiction over the subject matter of the complaint or of the persons of the respondents".

On October 15, 1954, Sand filed a "First Amended Charge", and on the same day the Board filed an "Amendment to Complaint", neither of which materially altered their respective original allegations.

On December 13, 1954, the Trial Examiner filed an "Intermediate Report and Recommended Order", in which it was "recommended that the complaint be dismissed in its entirety".

On August 26, 1955, the Board handed down a "Decision and Order" holding that "By inducing and encouraging

employees of Havstad and Jensen to engage in a strike or concerted refusal in the course of their employment to handle or install doors manufactured by Paine Lumber company [hereafter Paine], an object thereof being to [fol. 212] force and require Havstad and Jensen to cease using, handling or otherwise dealing in the products of Paine . . . and to force or require Sand . . . to cease doing business with Paine . . . , the [Union has] engaged in and [is] engaging in unfair labor practices within the meaning of Section 8(b)(4)(A) of the Act". 113 NLRB 1210, No. 123.

The Decision and Order were signed by two members of the Board, including the chairman, and was specially concurred in by a third member. Two members dissented.

On February 3, 1956, the Board filed in this Court a petition for enforcement of the Board's order. It is that petition which we are here considering.

## 2. *Statement of Facts*

Havstad and Jensen, joint venturers, were engaged in the construction of a hospital and other buildings on the campus of the College of Medical Evangelists, a medical school and nurses' training school owned and operated by the Seventh Day Adventists in Los Angeles.

Doors for the hospital, which was known as the White Memorial Hospital, were manufactured by Paine, and were purchased by Sand, a wholesale jobber and exclusive agent for Paine in Southern California. Sand sold the doors to Watson & Dreps, mill work contractors, with delivery between August 14, 1954, and August 17, 1954. Although counsel for the Union claims that "The record does not show what Watson & Dreps did with these doors", there is testimony that delivery of the doors to the job, where Havstad & Jensen were in charge, commenced on the Friday before August 17, and that on August 17, a member of the firm of Watson & Dreps informed James C. Barron, vice president and general manager of Sand, that Emmett R. Jensen, one of the joint venturers with Larry C. Havstad, had reported "that the carpenters on the job had refused to handle the doors because the doors did not have a union label." This testimony provides a sufficient link be-

tween Watson and Dreps and Havstad & Jensen, as regards the doors.

Between 10 and 11 o'clock in the forenoon of August 17, 1954, Arnold Steinert, carpenter foreman of Havstad & [fol. 213] Jensen, was told by Nathan Fleisher, business agent of Local 1976, one of the respondents herein, that "we'd have to quit hanging the doors until they got it settled that they were union or non-union doors, and they were going to check on 'em and in a day or two they would be cleared and then we could go ahead and go to work . . . he said they were non-union doors, and they didn't have a label and we'd have to quit hanging the doors until it was settled."

Earlier in the morning, Steinert had assigned laborers "to move the doors from floor to floor, the doors that went on each floor". He had also assigned Sam Agronovich, a carpenter, to start hanging doors. When Steinert received the order from Fleisher "to quit hanging the doors", he proceeded to carry out the mandate:

"Well, the laborers were moving the doors from floor to floor so I told them to leave them alone, leave 'em set and we went down into the basement where Sam Agronovich was working and told him we'd have to quit hanging the doors because they weren't union until they got it settled."

Fleisher was present when Steinert talked to Agronovich. When James Layton Nicholson, Havstad & Jensen's general superintendent of construction on the White Memorial Hospital project, arrived at his office that same morning, he was informed by the firm's secretary that "Fleisher had been on the job and had called the carpenters off from hanging the doors." Nicholson went to the jobsite and "observed that the laborers that [were] supposed to be placing the doors were not working at the time". When he asked the laborers for the reason, "All they said is that the union stopped them from hanging the doors, . . . and they [were] waiting for my foreman to replace them, or, in other words, give them other duties. . . ."

Nicholson found Fleisher, who was also at the building site, and asked him why he had stopped the men from

hanging the doors. The following conversation, according to Nicholson, ensued:

"He says he had orders from the District Council that morning to stop them from hanging the doors until they could establish the fact whether they were union or non-union made doors. He says, 'I could have [fol. 214] pulled them off yesterday but I waited until today.' And I told him at the time that, well, I says that I always thought I should have notice before anybody could be pulled off, and he says, 'Well, those are my orders', so he says 'We will have to stop hanging the doors until they get cleared by the union'."

At that juncture, Sam Agronovich and Saul Agronovich, the latter being the steward and also a carpenter, came up. Superintendent Nicholson at first told them that "if we can't hang the doors they might as well pick up their tools." Later Nicholson reconsidered the matter and told Steiniert "to relocate the men and in such a way they could keep on working."

On that day and the next, James C. Barron, the Sand executive, supra, got into touch by telephone with Earl Thomas, of the Los Angeles County District Council of Carpenters. In a second conversation Thomas informed Barron that he had received a telegram from a union officer in Wisconsin, informing him that "the doors were not union made and that Paine . . . did not belong to any union." According to Barron, the following conversation then ensued:

"I replied to him that—'Well, what are we going to do here, because the doors are here, and we are an innocent bystander? We are union and Watson & Dreps are union and the contractors are union, even the people that hauled the doors out here on the train were union people.' He said, 'Well, . . . under the circumstances, we can't hang non-union doors,' but he said to me, 'Why don't you buy union doors?'"

Barron also talked to Fleisher, who told him "that the doors don't have a union label, and they have to be cleared before I can permit them to be hung."

Jensen, of Havstad & Jensen, also talked to Thomas, who told him that he had found out that Paine "was not a union operation," and "that the carpenters would not be able to handle those doors".

On Tuesday, October 5, 1954, after Sand had filed the instant charges and the Board had sought a temporary restraining order, Superintendent Nicholson, who was himself [fol. 215] self "a union man", and Steinert asked each carpenter, separately, whether he "would be willing to hang the doors", and from each there was received a negative reply, though some of the carpenters qualified their answers by saying that they would hang the doors if they "could get clearance" on them, or if the doors "were released".

The "By-Laws and Trade Rules" of the District Council of Carpenters of the United Brotherhood of Carpenters of America, of which Steinert was a member, provided that "Only members of the . . . Brotherhood . . . shall be permitted to do carpenter work on any job", and that "No member shall use, handle, install or erect any material produced or manufactured from wood that is not produced and manufactured by members of the . . . Brotherhood . . ."

Similarly, the "Labor Agreement Between Southern California General Contractors and United Brotherhood of Carpenters and Joiners of America," hereinafter "Labor Agreement", contains the following provision:

"Workmen shall not be required to handle non-union material."

The crucial question in this connection is whether such a provision justifies a *work stoppage* by the employees.

### 3. The Applicable Statute

#### §158. Unfair labor practices.

"(b) It shall be an unfair labor practice for a labor organization or its agents—



"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or [fol. 216] otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . ."

#### 4. *The Board's Assertion of Jurisdiction was Proper*

Before the trial examiner, it was stipulated that in 1953, Sand received from Paine, the headquarters of which was at Oshkosh, Wisconsin, materials, including doors, valued at \$185,796.84. From January 1, 1954, to September 8, 1954, inclusive, Sand received from Paine, materials, including doors, valued at \$103,503.05. The doors in controversy are valued at \$9,148.32. Sand received the doors between August 10 and August 14, 1954, and notified Watson & Dreps, the buyers, who took delivery at Sand's warehouse during the period between August 14 and August 17. We have already traced the delivery of the doors from Watson & Dreps to Havstad & Jensen.

In other words, Paine, whose products were the real target of the Union's actions, shipped materials valued at more than \$100,000 from its Wisconsin plant to Sand, its Southern California distributor, during the first nine months of 1954, the crucial period here.

The Union, by refusing to use the doors on the Havstad & Jensen hospital job in Los Angeles, thereby interfered with more than a so-called *de minimis* flow of shipments into California. This is sufficient to bring the Union's obstructionist activities within the Board's legal jurisdiction.

In *National Labor Relations Board v Denver Building & Construction Trades Council*, 1951, 341 U.S. 675, 683-684, the Board had found that the activities complained of had had a sufficient impact upon interstate commerce to sustain

its jurisdiction, and the Court of Appeals was satisfied. The Supreme Court commented that "We see no justification for reversing that conclusion," and added:

"The Board found that, in 1947, Gould & Preisner purchased \$86,560.30 of raw materials, of which \$55,745.25, or about 65% were purchased outside of Colorado. Also, much of the merchandise it purchased in Colorado had been produced outside of that State. [fol. 217] While Gould & Preisner performed no services outside of Colorado, it shipped \$5,000 of its products outside of that State. Up to the time when its services were discontinued on the instant project, it had expended on it about \$315 for labor and about \$350 for materials. On a 65% basis, \$225 of those materials would be from out of the State. The Board adopted its examiner's finding that any widespread application of the practices here charged might well result in substantially decreasing the influx of materials into Colorado from outside the State and it recognized that Gould & Preisner's annual purchase of over \$55,000 of such materials was not negligible.

"The Board also adopted the finding that the activities complained of had a close, intimate and substantial relation to trade, traffic and commerce among the states and that they tended to lead, and had led, to labor disputes burdening and obstructing commerce and the free flow of commerce. *The fact that the instant building, after its completion, might be used only for local purposes does not alter the fact that its construction, as distinguished from its later use, affected interstate commerce.*" [Emphasis supplied.]<sup>2</sup>

It is immaterial, so far as the Board's legal jurisdiction is concerned, that Havstad & Jensen obtained the doors from Paine from an intermediary in California—Watson & Dreps—rather than by direct shipment from out of the State. See *National Labor Relations Board v Cowell Port-*

<sup>2</sup> See also *Local 74, United Brotherhood of Carpenters & Joiners of America v National Labor Relations Board*, 1951, 341 U.S. 707, 712.

land Cement Co., 9 Cir., 1945, 148 F.2d 237, 242, certiorari denied, 1945, 326 U.S. 735; National Labor Relations Board v. Townsend, 9 Cir., 1950, 185 F.2d 378, 382-383, certiorari denied, 1951, 341 U.S. 909.

We agree with the Board that the Trial Examiner erroneously designated Havstad & Jensen as the primary employer, in considering whether jurisdiction was to be asserted. Havstad & Jensen was a neutral employer whose carpenters were unlawfully induced by Fleisher, via Steinert, to refuse to install the doors in question. Paine was the primary employer, for it was *Paine's* products to which the Union objected. Havstad & Jensen was the *secondary* employer.

[fol. 218] It is clear, then, that the dispute had a sufficient impact upon commerce to be subject to the Board's jurisdiction as a matter of law. We next address ourselves to the question of whether the Board should have *assumed* jurisdiction in the instant case. In other words, does the present controversy meet what the Union terms the Board's "monetary" standards?

In Jonesboro Grain Drying Co-operative, Case No. 32-RC-693, 110 NLRB 481, 483, No. 67, decided on October 26, 1954, the Board announced, *inter alia*, the following jurisdictional standard:

"Accordingly, we have determined that in future cases the Board will assert jurisdiction over enterprises which annually meet *one or more* of the following standards:

"(2) *Direct outflow standard*:

An enterprise which produces or handles goods and ships such goods out of State, or performs services outside the State in which the enterprise is located, valued at \$50,000 or more." [Emphasis supplied.]

In Truck Drivers Local Union No. 649, (Jamestown Builders Exchange), Case No. 3-CC-19, 93 NLRB 386, 387, No. 51, decided on February 23, 1951, the Board said:

"By its very nature the effect of a secondary boycott extends beyond the operations of the primary employer with which the union is engaged in a dispute, and reaches the secondary employers whom the Union is attempting to force or require to cease dealing with the primary employer by means prescribed [*sic*] in Section 8(b)(4) [29 USCA §158(b)(4), *supra*]."

Chief Judge Clark, in *National Labor Relations Board v Associated Musicians, etc.*, 2 Cir., 1955, 226 F.2d 900, 907, certiorari denied, 1956, 351 U.S. 962, commented:

"In any event it is doubtful under the Act whether coverage of the secondary employer need be established independent of coverage of the primary employer. . . . We think the better view is that the secondary activity is but an extension of the labor dispute with the primary employer and that the businesses [fol. 219] of both employers are to be considered in determining jurisdiction of the secondary activity. The opposite conclusion would require the fragmenting of the authority of the Board over labor disputes—a result which, lacking specific legislative command, we should shun. [Citing *Jamestown Builders Exchange, supra*, and *McAllister Transfer case, infra*.]"<sup>3</sup>

Finally, as Judge Mathews observed in *National Labor Relations Board v Stoller*, 9 Cir., 1953, 207 F.2d 305, 307, certiorari denied, 1954, 347 U.S. 919, "The general rule is that, where the Board has jurisdiction, as it had in this case, whether such jurisdiction should be exercised is for the Board, not the courts, to determine."

The Board's assertion of jurisdiction in the instant case was proper.

<sup>3</sup> See also *Joliet Contractors Ass'n v National Labor Relations Board*, 7 Cir., 1952, 193 F.2d 833, 840.

5. *The Board was Correct in Finding That the Union Violated the Act by Inducing Employees of Havstad & Jensen to Refuse to Install Paine Doors.*

As we have seen, the evidence shows that there is no serious question that Steinert, following Fleisher's instructions, caused employees of Havstad & Jensen to engage in a concerted work stoppage for the object forbidden by Section 8(b)(4)(A).

The union contends that "If this idleness can be termed a work stoppage, it is clear that the cessation did not originate with the employees but was a direct result of managerial orders." It is also urged that "Havstad & Jensen were parties to and bound by a collective bargaining agreement whereby they had previously agreed not to require workmen to handle non-union materials."

In our view, there was inducement to a concerted refusal in the statutory sense, not authorized by the contract between Havstad & Jensen and the Union. An employer may well remain free to decide, as a matter of business policy, whether he will accede to a union's boycott demands, or, if he has already agreed to do so, whether he will fulfill his agreement. An entirely different situation, [fol. 220] however, is presented under §8(b)(4)(A) of the Act (29 USCA §158(b)(4)(A), *supra*) when it is sought to influence the employer's decision by a work stoppage of his employees. Such a work stoppage, Congress has plainly declared, is unlawful, when the object—clearly present here—"is . . . forcing or requiring any employer . . . to cease using . . . the products of any other . . . manufacturer, or to cease doing business with any other person".

In the instant case, we have seen that, despite the "hot cargo" provision in the contract, *supra*, the employees had actually been handling Paine doors. They ceased doing so only upon Fleisher's and Steiner's orders. Those orders, we think, were in direct contravention of the mandate.

In *National Labor Relations Board v Washington-Oregon Shingle Weavers' Dist. Council*, 9 Cir., 1954, 211 F.2d 149, 152, we said:

"The prohibited object of the boycott is stated by the statute to be 'forcing \* \* \* any employer or other



person to cease using \* \* \* the products of any other producer, processor, or manufacturer \* \* \* In fact, if the object is sought, not because of any dispute, but merely because the union dislikes the other producer for any reason, or for no reason, the conduct would appear even more reprehensible. \* \* \* The only dispute between the Union and the Company was over the latter's use of unfair shingles, and had no bearing on wages, working conditions, etc. In such a case, a strike called by the Union can have no other purpose than to compel the Company to cease using what the Union considers unfair shingles.

Furthermore, the legislative history of the Act [*infra*] clearly shows that Congress intended to proscribe exactly the type of union action involved here."

In *General Drivers, etc., and American Iron and Machine Works Company*, No. 121, 115 NLRB 800, 801, decided on March 15, 1956, the Board said:

"1. We find, as did the Trial Examiner, that Respondent Teamsters, by its inducement of Employees [fol. 221] of the common carriers (secondary employers) to engage in a concerted refusal in the course of their employment to handle freight brought by American Iron and Machine Works Company (the primary employer) to the carriers' docks, with an object of forcing or requiring the carriers to cease doing business with American Iron, violated Section 8(b)(4)(A) of the Act.

"Like the Trial Examiner, we reject the contention of Teamsters that its conduct was excused by the 'hot cargo' clause in the Teamsters' contracts with the common carriers. This clause provided that members of Teamsters 'shall not be allowed to handle or haul freight to or from an unfair company.' However, in rejecting this defense, we do not rely, as did the Trial Examiner on [McAllister Transfer, Inc., 110 NLRB 1769] but rather on the more recent Board decision in [Sand Door and Plywood Co., 113 NLRB

1210, No. 123, decided August 26, 1955] which was decided after the issuance of the Intermediate Report in the case at bar. As stated in the principal opinion in that case, regardless of the existence of a 'hot cargo' clause, any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act, when one of the objectives set forth in Section 8(b)(4)(A) is present. Thus, while Section 8(b)(4)(A) does not forbid the execution of a hot cargo clause or a union's enforcement thereof, by appeals to the *employer* to honor his contract, the Act does, in our opinion, preclude enforcement of such clause by appeals to employees, and this is so whether or not the employer acquiesces in the union's demand that the employees refuse to handle the 'hot' goods." [Emphasis supplied.]

Similarly, in *International Brotherhood of Teamsters, etc., and McAllister Transfer, Inc.*, 110 NLRB 1769, No. 224, *supra*, decided on December 16, 1954, the Board used the following language:

"We are concerned here with clauses in collective bargaining agreements, commonly known as 'hot cargo' clauses, which provide that the Union and employees [fol. 222] may refuse to handle goods designated as 'unfair' and that such refusal shall not be deemed a violation of the contract or cause for discharge. . . . The Respondents in the instant case, as part of their efforts to force McAllister's employees to join their locals, determined that McAllister freight was 'unfair'. The Respondents thereupon engaged in a boycott of McAllister freight through other common carriers, . . . with which they had contracts containing so-called 'hot cargo' clauses. . . .

"Essentially, then, the basic question, as we see it, is whether these ['hot cargo'] clauses constitute a meritorious defense to the complaint which alleges violations of Section 8(b)(4)(A) and (B).

<sup>4</sup>—the instant case.

"In enacting these provisions of the Act, it is clear that Congress declared a public policy against *all* secondary boycotts, without distinction as to type or kind.

"As the late Senator Taft stated in the course of the legislative debate:

"The Senator will find a great many decisions which hold that under the common law a secondary boycott is unlawful. Subsequently, under the provisions of the Norris-LaGuardia Act, it became impossible to stop a secondary boycott or any other kind of a strike, no matter how unlawful it may have been at common law. All this provision of the bill does is to reverse the effect of the law as to secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have broadened the provisions dealing with secondary boycotts as to make them an unfair labor practice. 93 Cong. Rec. 4323.

"More specifically, Senate Report No. 105 on S. 1126 stated:

"Because of the nature of certain of these practices, especially jurisdictional disputes and *secondary boycotts* and strikes for specifically defined objectives, the committee is convinced that additional procedures must be made available under the National Labor Relations Act *in order adequately to protect the public welfare which is inextricably involved in labor disputes.*

\* \* \* \* \*

[fol. 223] "Hence, we have provided that the Board, *acting in the public interest and not in vindication of purely private rights*, may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and *boycotts* defined as 'unfair labor practices.' [Emphasis added by the Board.]

"We deem it significant that Congress spoke in unmistakable terms of the protection of 'the public welfare which is inextricably involved' in such disputes, and pointedly characterized the Board as 'acting in the public interest and not in vindication of purely private rights'. It is of course, a necessary concomitant of the protection of the public welfare that protection is also extended to employees and employers as well. But it is only fair to say that such protection to private interests was in no way intended by Congress to detract from the public interest that constitutes the very foundation of the policies implicit in these statutory enactments. It has by this time become axiomatic that the exclusive grant of authority to the Board to prevent unfair labor practices affecting commerce was to insure that the existence of some private agreements at odds with the statute does not preclude the Board from acting in the public interest.

... we necessarily feel constrained to pass on the validity of the 'hot cargo' clauses offered as a defense for the Respondent's conduct, and to make the unequivocal finding that such clauses are contrary to public policy and cannot therefore serve as a defense."

As was observed by Judge Bratton in *National Labor Relations Board v. United Brotherhood of Carpenters and Joiners, etc.*, 10 Cir., 1950; 184 F.2d 60, 64, certiorari denied, 1951, 341 U.S. 947, "The basic purpose and objective of the section of the Act is to prohibit the involvement of employers in labor disputes of other employers with whom they are doing business."

Finally, we consider the Union's argument that the work stoppage "was a direct result of managerial orders". This contention is based upon the theory that Steinert, the [fol. 224] foreman, "acted solely as a representative of management when he instructed employees to cease their work on the doors".

Steinert was a member of Local 563 of the Union. The By-Laws and Trade Rules of the Los Angeles County

District Council of Carpenters required that he belong to the Union, and that he should hire no non-union members. As foreman, he and the steward were "equally responsible for the enforcement of all By-Laws and Trade Rules," etc. Violators of that rule were "subject to a fine of \$100.00 and/or expulsion".

Therefore, when Fleisher ordered Steinert to stop work on the doors because they were non-union, it is logical to assume that he was invoking Steinert's obligations under the Union's rules. Cf. National Labor Relations Board v. Cement Masons Local No. 555, 9 Cir., 1955, 225 F.2d 168, 173-174, and cases there cited.

The fact that in some respects foremen, as has been said of buyers, "may also be agents of employers does not eliminate them from the scope of" §158(b)(4)(A). Amalgamated Meat Cutters, etc. v. National Labor Relations Board, C.A. D.C., 1956, 237 F.2d 20, 23.

The Union seeks to brush aside the force of its own rules by quoting the closing clause of Article XLII of the "Labor Agreement Between Southern California General Contractors and United Brotherhood of Carpenters and Joiners of America", which reads as follows:

"... that any provision in the working rules of the Unions, with reference to the relations between the Contractors and their employees, in conflict with the terms of this Agreement shall be deemed to be waived and any such rules or regulations which may hereafter be adopted by the Unions shall have no application to the work hereunder."

The above rule is not applicable here. We are not now concerned with Steinert's "relations" to "the contractors", but with his "relations" to his Union and his status and obligations therein. No contract with his employers could interfere with those relations, so long as he remained a member of the Union, which he indubitably was. So long as he remained a member, he was bound by the Union rules [for 225] governing his relations to the Union. The proposition is so plain as to require no further elaboration.



Nor could Steinert "waive" the Union's power to fine him \$100 for violating the subsection of the "By-Laws and Trade Rules" holding him jointly responsible with the steward for their enforcement!

We hold that the Board was correct in holding that the Union, through its foreman Steinert and its business agent Fleisher, violated §158(b)(4)(A) by ordering employees of Havstad and Jensen to refuse to install Paine doors.

#### 6. Conclusion

Accordingly, we hold that the Board's assertion of jurisdiction was proper, and that it was correct in finding that the Union violated the Act by ordering employees of Havstad & Jensen to refuse to install doors that had been manufactured by Paine.

A decree should issue enforcing the Board's order in full.

[File endorsement omitted]

[fol. 226] IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 15026

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

LOCAL 1976; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL, and LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS, and NATHAN FLEISHER, Respondents.

DECREE ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Before: Healy, Lemmon, and Fee, Circuit Judges.

This cause came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated August 26, 1955. The Court heard argument of respective counsel on December 13, 1956, and has considered the briefs and the transcript of record filed in this cause. On February 12, 1957, the Court, being fully advised in the

premises, handed down its decision enforcing the said order. In conformity therewith it is hereby.

Ordered, Adjudged and Decreed that the Respondents, Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, and Los Angeles County District Council of Carpenters, and their officers, representatives, successors, assigns, and agents, including Respondent Nathan Fleisher, shall:

1. Cease and desist from inducing or encouraging the employees of Havstad & Jensen, or any other employer, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services for their employer, where an object thereof is to force or require [fol. 227] Havstad & Jensen or any other employer or person to cease using, handling or otherwise dealing in the products of Paine Lumber Company or any other non-union manufacturer, or to force or require Sand Door and Plywood Co., or any other employer or person, to cease doing business with Paine Lumber Company or any other nonunion manufacturer.

2. Take the following affirmative action, which the National Labor Relations Board has found will effectuate the policies of the act:

- (a) Post at their Los Angeles, California, business offices, respectively, copies of the notice attached hereto as "Appendix A." Copies of said notice, to be furnished by the Regional Director of the National Labor Relations Board for the Twenty-first Region, Los Angeles, California, shall, after being duly signed by the official representatives of the Respondents, including Nathan Fleisher, be posted by the Respondents Local 1976 and District Council, immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places including all places where notices to members of said labor organizations are customarily posted. Reasonable steps shall be taken by said Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree what steps the Respondents have taken to comply herewith.

/s/ Paul P. O'Brien

Paul P. O'Brien

Clerk

## NOTICE TO ALL MEMBERS OF LOCAL 1976 AND OF LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS, AND EMPLOYEES OF HAVSTAD AND JENSEN

## PURSUANT TO

a Decree of the United States Court of Appeals, Enforcing an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

WE WILL NOT induce or encourage the employees of Havstad & Jensen, or any other employer, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services for their employer where an object thereof is to force or require Havstad & Jensen or any other employer or person to cease using, handling, or otherwise dealing in the products of Paine Lumber Company or any other nonunion manufacturer, or to force or require Sand Door and Plywood Co. or any other employer or person to cease doing business with Paine Lumber Company or any other nonunion manufacturer.

LOS ANGELES COUNTY DISTRICT  
COUNCIL OF CARPENTERS

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

LOCAL 1976, UNITED BROTHERHOOD  
OF CARPENTERS AND JOINERS OF  
AMERICA, AFL

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

Dated \_\_\_\_\_ By \_\_\_\_\_  
Nathan Fleisher Business Representative

[fol. 229] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 230] SUPREME COURT OF THE UNITED STATES

No. 127, October Term, 1957

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 14, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is consolidated with Nos. 273 and 324 for argument. The Unions involved are allowed a total of 3 hours for oral argument and the National Labor Relations Board is allowed a total of one hour and a half for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.